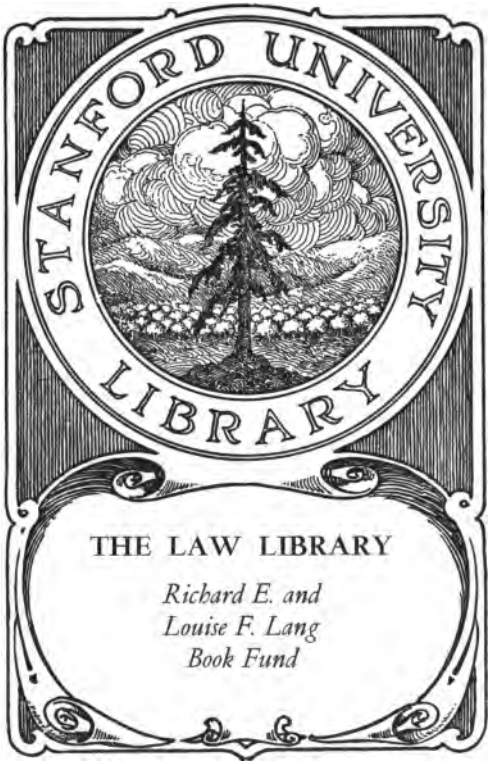
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REX v. RUSSELL.

"I was at the time the chairman of the [Conservative] Club."

. . . "I believe in my own knowledge that they [the brewers] do support the Conservative party, and I agree there is good reason why they do."

Evidence of Mr. F. W. Frodsham.
(Page 128 and 130.)

REX v. RUSSELL.

REPORT

OF

THE TRIAL OF SIR EDWARD RUSSELL

AT THE LIVERPOOL ASSIZES

FOR CRIMINAL LIBEL IN THE

"LIVERPOOL DAILY POST AND MERCURY,"

TOGETHER WITH

THE PROCEEDINGS ON THE APPLICATION FOR A RULE

BEFORE THE DIVISIONAL COURT.

LIVERPOOL:

DAILY POST AND MERCURY OFFICES, VICTORIA STREET.

1905.

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INITIATORY PROCEEDINGS.

APPLICATION FOR RULE NISI.

The Lord Chief Justice and Mr. Justice Ridley, sitting as a Divisional Court in the King's Bench Division, on 18th July, 1905, had before them an application for a rule nisi for a criminal information for libel against Sir Edward Russell, Knight, and Mr. Alexander Grigor Jeans, the publishers, editor, and proprietors of the "Liverpool Daily Post and Mercury."

The applicants were Mr. Isaac Morris, deputy chairman of the Liverpool Licensing Committee; Alderman Sir Charles Petrie, Alderman William Oulton, Mr. F. W. Frodsham, Alderman Charles Herbert Giles, Alderman Thomas Menlove, Mr. Morris Paterson Jones, and Dr. Richard Isaac Richardson.

The application was made by Mr. F. E. SMITH (instructed by Messrs. Sharpe, Parker, and Co., 12, New Court, Carey Street, E.C.), who informed their lordships that his clients were eight magistrates for the city of Liverpool, and the persons against whom the remedy was sought were the publishers, editor, and proprietors of the "Liverpool Daily Post and Mercury." He would indicate briefly the circumstances under which the relief was asked for, the circumstances being stated at length in the affidavits. There were in Liverpool 152 justices of the peace, and on January 19 of the present year the whole body of those justices met together to appoint a Licensing Committee, pursuant to the provisions of the recent Licensing Act. Representing all parties as they did, they unanimously elected sixteen magistrates to report as to the power which should be delegated to the Licensing Committee under the provisions of the Licensing Act. One of the complainants before their lordships that day, Mr. Isaac Morris, was unanimously elected deputy chairman of the committee at the meeting on January 31. The Licensing Committee, consisting of sixteen members, presented a unanimous report as to the amount of delegation to them.

The LORD CHIEF JUSTICE.—You are moving against a newspaper?

Mr. F. E. SMITH.—Yes, my lord.

The LORD CHIEF JUSTICE.—I think, under section 8 of the Law of Libel Act, 1888, you do not require leave.

Mr. F. E. SMITH.—I have to apply for a rule nisi. There is authority for that.

The LORD CHIEF JUSTICE.—You will have to satisfy me of that. I have a vague recollection that under section 8 of the Act of 1888 no criminal prosecution shall be commenced against any editor, publisher, or proprietor of any newspaper for any libel without order of the judge in chambers being obtained.

Mr. F. E. SMITH.—My authority is Yates v. The Queen, reported in 14, Queen's Bench Division, 648.

The LORD CHIEF JUSTICE.—That was before 1888.

Mr. SMITH.—It was thought there were similar words in the earlier Act.

The LORD CHIEF JUSTICE said he saw the distinction. In the case of libelling Mr. Justice Darling he got a criminal information.

Mr. SMITH said that was so. Learned counsel went on to say the whole conduct of the Licensing Committee was unanimous. They reported unanimously to the whole body of magistrates on the 31st January as to the powers which they recommended should be delegated to them. On February 7, 1905, the report was unanimously adopted by the whole Bench, and I will read to your lordships one of the exhibits to the affidavit of Mr. Isaac Morris, as it has a very material bearing on the words we complain of:—

"With regard to the imposing of charges (No. 4), the Committee desire to point out that in recommending the justices to delegate this power they do so with the view of enabling the Committee to form some estimate of the amount which will be required to be raised before the levy is made. If the delegation is made, the procedure will be as follows:—The Licensing Committee will first report for extinction. These reports will come before the justices, who will have power to reduce the number, but will be unable to increase it. The revised list of licences will then go back to the Committee, and, ultimately, it will be decided how much compensation will be payable in respect of each licence. It will then be necessary for the Committee to impose a charge which will be sufficient to pay the increased compensation and the expenses of the administration of the Act."

The learned counsel said it was important that their lordships should notice that the report defined it as being necessary for the Committee to impose a charge which would be sufficient to pay the necessary compensation and expenses of the administration of the Act, and that alone was what was delegated to the Committee by the whole body of magistrates. On March 22 the Committee reported unanimously that licences should be taken away. That was the only controversial work the Committee had to do; and was the only question on which there could have been a conflict on party lines at all. Yet their recommendation was a unanimous

one. On the 29th March the resolution was unanimously adopted by the full Bench, so that on the controversial point there was not the slightest difference of opinion. On the 12th July a meeting of the Committee was held to determine the amount of the levy within the terms which he (the learned counsel) had just read, and that was the sole object of the committee. Eighteen cases had been agreed to. The aggregate amount of the claims was £12,548, but those cases had been settled for £7,850. That left ten cases, the amount of compensation in which was to be determined by Somerset House, pursuant to the provisions of the Licensing Act. In these cases the claim was for £13,541.

The LORD CHIEF JUSTICE.—We understand there has been a bone-fide discretion and a consideration as to what funds would be required. You say there has been an important inquiry?

Mr. F. E. SMITH.—That is so. On the 13th July the "Liverpool Post and Mercury," in a leading article, said:—

"In the course of the debate on the third reading of the Licensing Act, the Prime Minister said: 'I am perfectly convinced that when the Bill is working, and when it is seen that by this Bill, and this Bill alone, you can without gross injustice and discontent really diminish the number of licences in this country, all parties, forgetting the differences which have unhappily divided us for the last three months, will admit that this is the greatest contribution ever made to the cause of temperance reform.' Brave words these! Now, let us see how this greatest contribution ever made to the cause of temperance reform is operating in Liverpool to diminish the number of licences. Yesterday there was a meeting of the Licensing Committee to fix the rate of the levy on licensed houses to form the compensation fund. Four members of the Committee—Mr. Charles Jones, Mr. Henderson, Mr. T. D. Laurence, and Mr. Doughan—were in favour of fixing the rate at the maximum allowed by the Act. Sir Thomas Hughes, probably feeling that it would be impossible to persuade the Committee to impose the maximum, suggested three-fifths. Even this modest compromise was rejected, and the Committee decided, by the votes of Sir Charles Petrie and Messrs. Isaac Morris, Oulton, Frodsham, Giles, Menlove, M. P. Jones, and Richardson, to fix the rate at one-half the maximum. These gentlemen will hardly pretend that they were influenced in the course they took by a desire to diminish the number of licences in the city. The sum which it will be possible to raise in the current year at the fixed rate will amount to about £17,500. Now, apart from expenses of administration, which will be considerable, the very modest programme which the bench have decided on for the present year must involve an expenditure considerably in excess of the total that can be raised by yesterday's decision. The bench have not ventured to propose the extinction of a single full licence, but they have picked out a few of the '69 beerhouses in the A and B Divisions for abolition under the Act.

Compensation for a few of these, amounting in all to £8,000, has been fixed by mutual agreement, and the rest have been referred, as provided by the Act, to the arbitration of the Inland Revenue Authority. The amount in these cases is not likely to be less than £13,000. The matter, therefore, stands thus: For the extinction of the selected licences, licences which the bench have decided ought to be extinguished forthwith in the interests of the community, a sum of not less than £21,000 is required, and now the Licensing Committee decline to levy a larger sum than £17,500. There is only one explanation of this state of affairs. The dominant party on the bench do not desire to facilitate the working of 'the greatest contribution ever made to the cause of temperance reform;' they do not desire to diminish the number of licences in the city, but rather to hamper and obstruct those who are striving to effect without 'gross injustice and discontent' a sorely needed reduction. The effect of the Committee's decision will be to make the rate of reduction actually less than it was under the old order of things, a result which no doubt was shrewdly foreseen. We congratulate 'the trade' upon the ability and courage of their friends—we had almost said their representatives—on the Licensing Committee."

The learned counsel then stated the names of the gentlemen for whom he applied for a rule nisi.

The LORD CHIEF JUSTICE.—I have heard the article you have read, but, without expressing any opinion as to whether it is otherwise than a libel, what authority have you that for such a libel under the rules a criminal information is granted?

Mr. F. E. SMITH read a judgment of Lord Chief Justice Cockburn in the case of ex-parte Hopkins, reported in 33 "Justice of the Peace," page 68. In a later case the learned judge said a newspaper may comment on the conduct of magistrates in discussing a case without hearing the whole of the evidence, but it must not impute in so doing that the magistrates acted from political motives. In the case of Regina v. Labouchere, the learned judges said the remedy such as that which the applicants asked had usually and properly been confined to cases of magistrates and persons of position, whose character was of public importance, so as to entitle them to immediate vindication. In a similar case of Regina v. Masters, reported in the "Times" Law Reports, page 44, Mr. Justice Mathew, as he then was, said the application was made on behalf of magistrates. It was for the jury to say whether it was a libel. It clearly dealt not only with the particular case, but with the whole judicial conduct of the justices, and charged them with an abuse of their position. The law was clear (said Mr. Justice Mathew) that criminal informations were reserved for cases of libel on persons in official or judicial positions, in which it was in the public interest that jurisdiction should be exercised. The learned counsel said he should contend that the terms of the libel in the case before their lordships, and the circumstances under

which it was published, fell within the language used by Lord Chief Justice Cockburn and Mr. Justice Mathew and those who had considered the principle in similar cases.

Mr. JUSTICE RIDLEY asked if the learned counsel contended that the alleged libel tended towards a breach of the peace.

Mr. F. E. SMITH replied that that was not necessary in this case.

Mr. JUSTICE RIDLEY.—That is one of the elements to be considered.

Mr. F. E. SMITH thought not in this case.

Mr. JUSTICE RIDLEY.—Are you not in a better position but in a worse position than in any case for indictment for libel?

Mr. F. E. SMITH.—We are in the same position in which complainants have been in cases in which rules have been granted.

The LORD CHIEF JUSTICE.—There is a broad distinction. In the old days, which Mr. Smith is, fortunately, not old enough to remember, the rules were largely granted, and were made use of to obtain an apology and payments of costs. It was pointed out in 1874 by Lord Chief Justice Cockburn that the practice should not be allowed, and that if these rules were granted the criminal information must go to the very end. Mr. Justice Ridley was right in pointing out that you are in the same position as an indictment, and that it is only in exceptional circumstances that such a rule is granted.

Mr. F. E. SMITH agreed that it was only in exceptional cases that such a rule was granted, but submitted that this was an exceptional case. He argued that there was only one explanation of the words, "The dominant party on the Bench do not desire to facilitate the working of the 'greatest contribution ever made to the cause of temperance reform.' They do not desire to diminish the number of licences in this country, but rather to hamper and obstruct those who are striving to effect 'without gross injustice and discontent' a sorely-needed reduction. The effect of the committee's decision will be to make the rate of reduction actually less than it was under the old order of things—a result which, no doubt, was shrewdly foreseen. We congratulate the trade on the ability and courage of their friends—we had almost said their representatives—on the Licensing Committee." If those words meant anything, they meant not merely the innuendo, but the specific allegation, of some sinister and underhand arrangement with the trade.

The LORD CHIEF JUSTICE.—Yes; we will not trouble you further. The court must remember that in these applications for criminal information it is only under special circumstances that rules are granted, and that persons who are engaged in public life have to be satisfied with the ordinary remedies for libel and slander. My brother and I had a doubt whether we ought to grant the rule in

this case. We think it right to state our reasons for granting the rule. Magistrates who appear to have exercised their jurisdiction are named persons, and it is alleged of them not that they acted judicially, but that they acted in a way which will show that they have not judicially given their decision. Therefore in the absence of explanation, which may be given, we think it is a case which falls within the rule. Magistrates who are exercising their public jurisdiction must be protected, and without expressing any opinion on the merits we think it is a case for a rule nisi.

Mr. JUSTICE RIDLEY.—I agree with the Lord Chief Justice.

A rule nisi was granted accordingly.

DECISION IN THE KING'S BENCH DIVISION.

RULE MADE ABSOLUTE.

It will be remembered that on the 18th of July the Lord Chief Justice and Mr. Justice Ridley, sitting as a Divisional Court, granted a rule nisi for a criminal information against Sir Edward Russell, the editor of the "Liverpool Daily Post and Mercury," and Mr. A. G. Jeans, the publisher of the same newspaper, in respect to the publication of an alleged libel upon the Liverpool licensing magistrates. Application for the rule to be made absolute was heard by the same judges on August 9th, 1905.

Mr. Asquith, K.C., Mr. Horridge, K.C., and Mr. Hemmerde (instructed by Messrs. Oliver Jones, Billson, and Co.) now appeared to show cause against the rule; whilst Sir Edward Clarke, K.C., Mr. W. F. Taylor, K.C., Mr. F. E. Smith, and Mr. W. H. S. Oulton (instructed by Messrs. Payne and Frodsham) appeared in support of the rule.

THE CASE AGAINST THE RULE.

Mr. ASQUITH.—I appear with my friends, Mr. Horridge and Mr. Hemmerde, to show cause against a rule which was granted calling upon Sir Edward Russell and Mr. Jeans, who are the editor and the printer and publisher of the "Liverpool Daily Post and Mercury," to show cause why an information for libel upon justices should not be filed against them.

The LORD CHIEF JUSTICE.—Sir Edward Russell is the proprietor and Mr. Jeans is the editor?

Mr. ASQUITH.—No. Sir Edward Russell is the editor and Mr. Jeans is printer and publisher. I shall have something to say about the position of the latter later on, and I think it will turn out that he had nothing whatever to do with this case. Sir Edward Russell is the editor, and takes all the responsibility for what appears in the paper, of which Mr. Jeans is the printer and publisher. The rule is for criminal information on the ground that what is published in the paper on the 13th of July are false and scandalous libels concerning the applicants, the licensing justices of Liverpool. I have to submit to your lordships, on behalf of Sir Edward Russell and Mr. Jeans, that there is no ground whatever, even if the applicants' evidence remains unanswered, for putting into operation this prerogative remedy on behalf of

gentlemen whose only grievance is that, in the discharge of administrative functions, they had been the subject of perfectly legitimate criticism, although I agree that that criticism is severe. The limits which will regulate the discretion of the court in this matter of granting a criminal information varied in the past very much from time to time, but the whole subject is reviewed in the case of the Queen v. Labouchere by the late Lord Chief Justice Coleridge, and he points out that while in the days of Lord Tenterden—or earlier days—criminal informations were granted freely, the tendency of modern days had been to restrict them, and to confine them only to cases in which the libel complained of is published of persons occupying a judicial or official position, in respect of their discharge of the duties of that position. The Lord Chief Justice also pointed out that criminal informations were now limited to cases where the libel was in its text and terms scandalous, but they were not granted in cases of fair comment, or in cases where there was anything in the nature of legitimate criticism. Unless these two conditions are satisfied, the well-established practice of this court is to refer the applicants to the ordinary remedy which the law provides, and which is quite adequate for a person who has been attacked in the public Press. Before I read the libel I should say, by way of preface, that the criticism here was a criticism passed upon the conduct of the applicants as members of the Licensing Committee of Liverpool with regard to certain recommendations made by them to the general body of the justices in regard to the proposed reduction of licences in the city, and the levying, under the Licensing Act of 1904, of compensation to provide for those cases in which the licences were recommended to be extinguished. It is important, I think, at the outset, to realise exactly what is the status and what are the functions of a committee of that kind. The committee is appointed under section 5, sub-section 4, of the Licensing Act of 1904. Your lordships are well aware that by that Act the jurisdiction of Licensing Justices to refuse the renewal of licences, except upon specified grounds, has been transferred from the local justices to Quarter Sessions, and the function of the Licensing Justices is merely to report to them. In the case of county boroughs, provided for by section 5, sub-section 4, they do not go to the Quarter Sessions, but to the general body of justices.

The LORD CHIEF JUSTICE.—Are they a licensing authority or a reporting authority?

Mr. ASQUITH.—They are a reporting authority. As I say, in a county borough you do not go to the Quarter Sessions, but to the general body of justices. The applicants in this case were exercising the functions of such a committee, and in so doing they were attacked.

The LORD CHIEF JUSTICE.—They were going to act under section 1.

Mr. ASQUITH.—They had first presented a report under section 1, and suggested a reduction of licences, and they were proceeding to determine the amount of compensation which should be levied.

The LORD CHIEF JUSTICE.—They were acting on the final stage of the report?

Mr. ASQUITH.—They were acting on the final stage of the report, and their proceedings were submitted to the general body for confirmation. It is important at the outset to see what is the law in regard to the functions of a body so acting, and I may remind your lordships of what passed in the House of Lords in the case of Boulter v. the Justices of Kent. The matter they determined was that the appeal section of the Summary Jurisdiction Acts did not apply to the decision of magistrates acting as licensing justices with regard to the renewal of licences, on the ground that it is not a case of jurisdiction at all, because the magistrates are not acting as a judicial body. One of the late Law Lords said there that there was no occasion for the justices to act on sworn evidence at all, and they might act on their own motion, and there were in regard to the proceedings none of the ordinary incidents of judicial procedure. It is sufficient for my purpose to point out that the Lord Chancellor said that the justices in this position did not occupy the position of judges at all, but were exercising a discretionary jurisdiction as to how many public houses they would permit in the district, or what persons should carry them on. His lordship draws the fullest distinction between the case of the same persons—justices—acting judicially and acting administratively in the exercise of the discretion which is conferred upon them. In the case of the Royal Aquarium v. Parkinson in 1892, the question was whether an action would lie against a member of the London County Council in respect of defamatory statements alleged to have been made by him at a meeting of the committee of the Council for granting music and dancing licences, and one of the defences suggested was that a statement so made was privileged, and that the person making it had an absolute and not a qualified privilege In fact, it was said that he had the absolute privilege which clothed a judicial proceeding, and the question is neatly raised whether the County Council were acting judicially. The decision was that they were not acting judicially in regard to any such statement so made. The judgment of Lord Esher states the grounds of policy on which the absolute privilege is founded. He says, "This doctrine has never been extended farther than the Courts of Justice and tribunals acting in a manner similar to that in which such courts act. Can it be said that a meeting of the County Council, when engaged in considering applications for music and dancing licences, is such a tribunal?" He goes on to point out that the justices have two distinct, separate duties. They have judicial duties and they have administrative duties, one of which is this duty of granting licences.

The LORD CHIEF JUSTICE.—I am not sure that I quite follow you, although I follow your distinctions perfectly. Do you say that the quarter sessions, under the old law, in finally declining to renew licences, are not acting judicially?

Mr. ASQUITH.—That is not the same question.

The LORD CHIEF JUSTICE.—I was not really saying it was. I only want to see the distinction. I have not got clearly in my mind what you say these justices were doing, but I quite understand the principle. Is not the final authority that says "We won't renew," subject to compensation, acting judicially?

Mr. ASQUITH.—No, I think not. Similar passages occur in the other judgments of the Lords Justice. There is a later case—the Farnham case, of the King v. Howard, in 1902 in the King's Bench Division. That is where the justices had gone and made an investigation on their own account to see whether or not there was a redundant supply of licences.

The LORD CHIEF JUSTICE.—These are licensing justices, not quarter sessions?

Mr. ASQUITH.—They were exactly in the same position as this Committee here.

The LORD CHIEF JUSTICE.—I am afraid I have not understood it. I thought you said this Committee was deciding that the licences should not be renewed, subject to compensation?

Mr. ASQUITH.—No, I will tell you. This Committee had considered the question of what reductions should be made in the licenses, and had come to the conclusion that a certain reduction should be made, and so reported to the general body of the licensing justices, who confirmed the report. The Committee then proceeded to consider how much compensation should be levied, from what I may call the surviving licences of the city, to make good the requirements of the situation, and it was in respect of their proceedings in discussing and determining that question that these comments were published.

The LORD CHIEF JUSTICE.—Under which section do they perform that function?

Mr. ASQUITH.—They have to report under section 3, subsection 1, which says: "Quarter sessions shall in each year, unless they certify to the Secretary of State that it is unnecessary to do so in any year for the purposes of this Act, impose in respect of all existing on-licences renewed in respect of premises within their area a charge at rates not exceeding so much, &c., the rates shown in the schedule. Now, the quarter sessions in a county borough means the general body of the licensing justices, and prima facie the whole sum at the rate described in the schedule would be levied by way of compensation in Liverpool, as in every other place, to meet the requirements of this Act. There is no question here of lowering

the rate. Prima facie, I say, unless they certify otherwise, that is their duty, and this Committee was considering it. Of course, the matter would ultimately have to be determined by the general body of the Licensing Justices to consider what levy should be made in Liverpool under this section.

Sir EDWARD CLARKE.—My learned friend is mistaken in saying it would have to be considered by the whole body of justices. This Committe was appointed under the sub-section, and would deal with the matter finally.

Mr. ASQUITH.—I am not sure about that, but I do not know that it matters for the sake of my argument. Whether finally or not, they were considering what levy should be made. It was in no sense of the word a judicial proceeding; it was a purely administrative act. Just to complete the authorities on the point, the passage I was reading was from the judgment of the Master of the Rolls. He quotes a passage from the well-known judgment of the Lord Chancellor in Sharpe v. Wakefield, and then he goes on: "The key to the position appears to be that justices in dealing with licences are not a judicial body; they are deliberately appointed because from their very circumstances they are likely to have local knowledge, and it cannot have been the intention of the Legislature that they should divest themselves of all such knowledge in dealing with licences." I think, before dealing with the facts, I had better read the article now, as it is only when your lordships have it in your minds that these matters become relevant. It appears in an edition of the "Daily Post and Mercury" for July 13.

Mr. ASQUITH then read the article quoted on page 11; when he came to the comment of "Brave words these," he said:—"I do not know, I am sure, why the Prime Minister should not move for a criminal information."

Having concluded the article, Mr. ASQUITH proceeded:—That is the whole thing complained of. I say, stopping there, and reading that article by itself, there never has been a case—I say it with the greatest confidence—there never has been a case, for the last fifty years at any rate, in which this court has granted a criminal information respecting an article couched in such terms as that. It is a criticism—I agree a severe criticism—expressed in perfectly decorous and not intemperate language, of the action of these gentlemen sitting, as I say, in the exercise of the purely administrative function, in regard to a matter in which, of course, the whole community of the city of Liverpool was vitally interested.

The LORD CHIEF JUSTICE.—What we have to consider is the point to which we drew attention when the rule was applied for. It is not usual for us to make a statement when a rule nisi is asked for, but it seemed to us a matter for consideration whether the suggestion was that these gentlemen had not acted impartially as magistrates, but had acted so that the Act could not be fairly worked and as the friends of the publicans.

Mr. ASQUITH.—Suppose it does amount to that. Suppose that is the imputation. Is it not an imputation which a journalist makes subject to the ordinary risk? Every journalist in the country who takes upon himself to publish statements defamatory of another does so subject to the ordinary risk. But in this case I say the Committee is in no better and in no different position than is the City Council of Liverpool when discussing the question of the demolition of houses, or the provision of open spaces, or any other matter which affects the good government of the town. Every journalist, I may say, in this country is in the habit of criticising, and criticising freely, and even imputing motives, and imputing partisanship. That is the real imputation here—an imputation of partisanship in the administration of this matter. But it is at the ordinary risk of course. It has never been suggested that this prerogative remedy of a criminal information ought to be resorted to in a case like this. It is a totally different thing, of course, in a case when the rule is moved for in the case of a magistrate sitting on the bench and exercising his judicial functions, as in the cases stated by my learned friend when he moved for this rule. Just by way of accentuating the contrast, I will remind your lordships of those cases. My learned friend quoted the case of the Queen v. Masters (6 Law Times Reports, page 44). It was a rule for a criminal information against the proprietors of the "Kent Messenger." It was a case in which a man stole two deal boards, and when he saw the policeman he dropped them, and set up the defence that he went to the place to sleep. The justices convicted him, and sentenced him to twenty-one days' imprisonment with hard labour. The article in the "Kent Messenger" described the magistrates as devoid of every sentiment to which mercy could appeal. Lord Justice Mathew (then Mr. Justice Mathew) said he was unwilling to limit the right of criticism on sentences, as often there were no other means of affecting sentences than by public opinion, but it could not be contended that this was a fair case of criticism only. The article was a gross abuse of the great power of the Press, and it clearly dealt not only with the particular case, but with the whole judicial conduct of the justices. As a general rule criminal informations were reserved for cases affecting justices in a judicial or official position, or who filled some post in which it was necessary that such a jurisdiction should be exercised. The only other case, my lords, which was quoted was the case of Lord Radnor, 33rd vol. "Justices of the Peace," p. 740. There it was an application by the magistrates in respect of comments upon a conviction by the bench. Two girls had unlawfully stolen some plants, and they were fined 20s. A question was asked about the case in the House of Commons. An article appeared in the "Salisbury Times" headed "Wealth against Poverty," and Lord Justice Cockburn held that the comments made certainly exceeded a comment on the facts, and were an attack on character, and a rule nisi was granted. These are two cases in which you have a rule nisi granted, and they are

totally different from anything suggested in this case, where the magistrates were not really acting magisterially or judicially, but acting as an administrative body and discharging duties under the Act of Parliament. Taking the article at the strongest, it does not amount to more than that, in the exercise of their jurisdiction, they were guilty of partisanship—in favour of one side. But, supposing the position had been reversed, and supposing a paper belonging to a different shade of opinion, in commenting on the action of the minority who were in favour of making a full levy, had said that "the effect of these gentlemen's actions would be really to make the amount levied more than was necessary for the circumstances of the case, but we congratulate the fanatical body whom they represent upon the ability and courage of their friends—one had almost said their representatives—on the Committee." Supposing it to be that does anyone really pretend that these gentlemen would have any excuse for coming to this court and saying, "We must have a criminal information. An imputation is made upon us of a gross and scandalous kind, and we are said to be the representatives and agents of the teetotal party"? Simply on the article as it stands, and without regard to the position of the persons or the nature of the duties they were exercising, I say this is no ground for making this rule absolute. I should like, before I go into the facts, to read the affidavit made by Sir Edward Russell.

The LORD CHIEF JUSTICE.—You have said something about what was called the "colour" of this paper. I may say I have no idea what it is. I don't know at this moment on which political side it is. I only mention this because you said something about the complexion of the paper.

Mr. ASQUITH.—I only said that, my lord, by way of illustration; one would gather from the article what its political complexion is.

The LORD CHIEF JUSTICE.—Oh, yes, I daresay we shall gather that before long.

SIR EDWARD RUSSELL'S AFFIDAVIT.

Mr. ASQUITH.—Similar comments on the same subject have been made on the other side.

The affidavit made by Sir Edward Russell is as follows:—

"1. Since 1869 I have been sole controlling editor of the 'Liverpool Daily Post.' Before that date I had been assistant editor and writer for five and four years respectively, so that I have worked continuously as a journalist in Liverpool for forty-five years, and have a general knowledge of its public affairs.

"2. On licensing questions the 'Liverpool Daily Post' has not taken any extreme line, but as in duty bound it has duly observed and commented upon the administration of the licensing laws.

"3. For some time prior to the passing of the Licensing Act, 1904, very important action was taken by the Bench in Liverpool for the better regulation of the trade, and for the reduction in the number of licences, 541 licences having been extinguished since 1889. In the city and throughout the country this policy of the Liverpool Bench has been recognised as a great improvement in administration, and as productive of considerable social amelioration. Among others, the Bishop of Liverpool has emphatically expressed himself to this effect. Liverpool, has, perhaps, in a greater degree than almost any city in England been afflicted by the curse of excessive drinking, and it is almost invariably the case that the judges of assize attribute a large proportion of the crime which comes before them to this cause. It has been the part of the 'Liverpool Daily Post,' and of myself, as its editor, to do all that was possible to strengthen the hands of those who were endeavouring to reduce the facilities for excessive drinking in the city, and to diminish as far as possible the number of licensed houses, which must be admitted on all hands to be sadly beyond the requirements of the population.

"4. It would have been unworthy and futile for any responsible journal in Liverpool not to have taken serious notice of the initial measures adopted by the administrative body in bringing the new Act into work.

"5. Accordingly, when the Licensing Act now in force was about to come into operation, the 'Liverpool Daily Post and Liverpool Mercury" published a leading article, a copy of which I produce as an exhibit to this affidavit, in which a strong recommendation was given to the magistrates that an effort should be made to guard against the Licensing Committee being nominated in a spirit of political partisanship in order to secure the best administration of the Act in the public interest, and more especially that those entrusted with the administration of the Act should, by means of the levy under the Act, proceed with the reduction of the licences as in recent years, by which policy the licensing magistrates had improved the character of Liverpool and earned warm public approbation.

"6. The aim of the paper being to advocate the particular method of administering the Act thus specified, when the Committee (which was subsequently appointed) proceeded, on the 12th of July, 1905, to fix the rate of the levy on licensed houses to form the compensation fund, the 'Liverpool Daily Post and Mercury,' in the article now attacked, complained that this particular method of administering the Act had not been adopted.

"7. I have read an affidavit by Mr. John Henderson, sworn herein in opposition to a rule nisi for a criminal information against myself and Alexander Grigor Jeans, and I say that all the facts therein set out were (in substance) known to me (except those set

out in paragraphs 13 and 16) when the aforesaid article was written. In the comment made in the said article there was no desire to reflect on the character or the personal conduct of the magistrates who were named as voting in the majority. The said magistrates had chosen to support a particular policy which, in the opinion of the 'Liverpool Daily Post and Liverpool Mercury,' was prejudicial to the public interest. The course which they had taken in limiting the levy more narrowly than, in the opinion of the 'Liverpool Daily Post and Liverpool Mercury,' was required by the public interest was part of a definite administrative policy. This policy seemed to the 'Liverpool Daily Post and Liverpool Mercury' not only in itself undesirable, but deserving of the most rigorous scrutiny in that those who had carried it out were all on one side of politics, and that side the side popularly, and in Liverpool actually, associated with the liquor trade.

"8. So far is it from being the case that the 'Liverpool Daily Post and Liverpool Mercury' is actuated by malice towards any of the complainants, I myself, who accept all responsibility for the tone of any comments appearing therein, hold in respect and esteem all the present complainants, and several of them are my personal friends. They are entitled to prefer the policy which they, as administrators of the Act, thought the best, but, as controlling the utterances of the 'Liverpool Daily Post and Liverpool Mercury,' I felt it necessary, in the ordinary course of my duty as the conductor of a public journal, to express the opinion that they had administered the Act in a manner less beneficial than would have been the case if they had adopted the policy of the minority, and that by so administering the Act they were actually benefiting the liquor trade, and were in danger of becoming in fact, though not in intention, its representatives. There was no idea whatever of reflecting on the magistrates in the exercise of any judicial or magisterial functions. The 'Liverpool Daily Post and Liverpool Mercury' regarded the whole matter as one of responsible administration, and criticised the conduct of the majority, in precisely the same manner as it might have criticised the action of the Admiralty or the War Office, or the choice of the City Council or any of its committees of any particular method of carrying out an Improvement Act.

"9. I respectfully submit that the results of the deliberations of the said Committee is all the more a fair matter for criticism inasmuch as their meeting of the 12th of July, 1905, as well as some other meetings, was held in private.

"10. I have read what purports to be a copy of an affidavit of Mr. Isaac Morris sworn in support of an application for a rule nisi for a criminal information against myself and Alexander Grigor Jeans. It is not the fact as therein stated that Mr. Jeans is one of the editors of the 'Liverpool Daily Post and Liverpool Mercury.'"

AN EDITOR'S RIGHTS.

Mr. ASQUITH concluded:—I think, my lord, that states very clearly what the position is—what Sir Edward Russell conceives his position to be in regard to this matter. He says he is strictly within his rights and duty as a public journalist, holding the views he does, that he should be able to write such an article as that; and I submit to your lordships it would be stretching the liberty of moving for criminal information beyond any precedent which can be cited for 100 years, or at least for fifty years, to apply it to a case such as this. I ought to go a little further into this matter; and I think this consideration ought to be enough to dispose of the case; and if no information is granted it does not preclude these gentlemen from resorting to any legal remedy they may have if they think themselves aggrieved by this article. It is desirable to refer to this article because it is so in point of fact that these administrative functions of licensing justices have been conducted in Liverpool, in the knowledge of persons of all shades of political opinion, upon party lines. Whether or not that should be the case is another question, but it is important to remember, when your lordships are considering, as you will have to consider, whether these are not in fact and in substance administrative functions, to see that all the parties, including applicants for this rule, have treated and dealt with the matter just as they would treat such a matter as anything dealt with by the City Council. We may approve or disapprove of the infusion of political bias into such things, but it exists on this matter of licences just as in other things.

The LORD CHIEF JUSTICE.—I quite follow your specific argument, Mr. Asquith; but how does it help you to show that there is political feeling one way or other?

Mr. ASQUITH.—Only as showing, my lord, that by the recognition of all parties here, who are concerned, this matter of licences has been treated, like all other municipal and administrative matters, just, for instance, as a matter regarding the composition of a committee of any particular department of the Council. I will come to the actual facts, and will deal with the affidavit of Mr. John Henderson. I will pass over the few opening statements and come to the paragraph 4.

MR. HENDERSON'S AFFIDAVIT.

He there says:—"In the year 1903 seventeen new justices were added to the roll. Of these, two at least were intimately connected with the liquor trade, and by far the greater majority were and are professing members of the Conservative party. At the latter end of 1904, just before the new Licensing Act came into force, and notwithstanding the addition in 1903, a further addition of twenty-four justices was made, of whom, again, by far the greater majority

were and are professing members of the Conservative party. In consequence of the addition of these forty-one justices from the time the Licensing Act in 1904 came into operation, the Conservatives formed a substantial majority of the city justices."

Then paragraph 5. "As soon as the aforesaid Act was passed a special meeting of the justices was called for the express purpose of fixing the number of the Licensing Committee for the future. I was present at this meeting, as were also, among others, two justices who were intimately connected with the liquor trade. Sir Thomas Hughes, the chairman of the former Licensing Committee, moved that the number should be fifteen. Sir Thomas Royden, a prominent Conservative, moved and carried an amendment that the number should be sixteen. The discussion and the vote taken thereafter followed, with little or no variation, on recognised party lines."

Then paragraph 6. "I have read what purports to be a copy of an affidavit sworn by Mr. Isaac Morris in support of an application for a rule nisi for a criminal information against Sir Edward Russell and Mr. Alexander Jeans. The statement in part 3 hereof to the effect that the sixteen justices selected to make up the Licensing Committee of sixteen were unanimously appointed is completely misleading. Shortly before the Act came into operation it had been suggested that Sir Thomas Hughes and Sir Thomas Royden should endeavour to agree upon the members of the Licensing Committee. Strong exception, however, was taken to this course in an article in the 'Liverpool Courier' (the recognised organ of the Conservative party in Liverpool), and thereupon the matter dropped. A meeting subsequently took place between the said Isaac Morris, representing the Conservative party, and myself, representing the Liberal party, at his office. At this meeting I pointed out to him that the only fair way of dealing with the matter would be for seven of each party to be appointed, with Sir Thomas Hughes as chairman. The said Isaac Morris, in reply, stated that as the whole body of justices had fixed the number at sixteen, my suggestion was not possible, and, further, that his party, having regard to their large majority on the Bench, would require at least ten out of the sixteen to be members of the Conservative party, Sir Thomas Hughes being one of the ten. After this a meeting of the Liberal justices, at which I was present, was held at the Reform Club, Liverpool, for the purpose of considering the proposal aforesaid of the said Isaac Morris. The said Liberal justices, realising that they were hopelessly in a minority, but that it would be better to select six Liberal justices who had knowledge and experience in licensing matters rather than to leave the Conservative majority the power to appoint such Liberal justices as they might choose, selected six Liberal justices accordingly. I informed Isaac Morris of this selection, and he informed me that his party had taken similar steps. Subse-

quently, at the general meeting of the whole of the justices, called for the purpose of selecting a Licensing Committee, ten names were proposed on behalf of the Conservative party and six on behalf of the Liberal party, and the sixteen names were approved at the meeting without discussion, it being understood that so long as the agreed proportion of representatives was observed neither party should take exception to the other party's nominees. That arrangement, by which the said proportion was determined, was never approved by the Liberal minority of the justices, nor by myself, who carried through the negotiations on their behalf. The Licensing Committee so appointed met and agreed that, as the time at their disposal before the licensing sessions for the current year was short, they would restrict their inquiries into the houses to be referred for refusal prior to these sessions to the beerhouses in the A and B Divisions of the city. All these houses were dealt with. The Committee visited a number on the first day, and I was surprised at the unanimity with which the whole Committee then agreed that many of these houses should be scheduled. One of the Conservative justices in particular expressed astonishment that so many of these houses had been allowed to exist, and on the second day's inspection it was agreed to schedule more houses visited. On the third day there appeared to be a distinct change of policy on the part of the Conservative members of the Committee, so noticeable that I referred to it openly to the aforesaid members; but I could get no explanations from them of this sudden change of policy, except that the Committee would have to make a full levy if they went on as they had started. From this time there was a noticeable reluctance on the part of the Conservative members of the Committee to schedule houses. The Committee ultimately decided to proceed with objections in forty-seven cases, and at the adjourned meeting evidence was taken from persons interested. Every case was considered, for in a large number there was a difference of opinion among the justices. They would then retire into their private room, and a vote would be taken as to whether a particular house should be reported with a view to the licence being taken away. The Committee in those cases would vote largely on party lines, and finally the list was reduced to twenty-nine houses to be reported. The Licensing Committee reported the said twenty-nine houses to the general body of the justices. I was a member of the Committee and entitled to a vote on the general body. There being no power by law in the general body of justices to add to the list, but only to reduce it, the list was confirmed. The statement in paragraph 6 of the affidavit of Isaac Morris that the general body of the justices adopted the said report is for the reasons set out misleading. A special meeting of the Licensing Committee was held on July 12, 1905, for the purpose of fixing the amount of the levy, this power having been referred to the Committe by the general body of the justices. At this meeting, which was held privately, there were present the chairman (Sir Thomas Hughes), eight Con-

servative justices, and myself, and Messrs. James A. Doughan, Charles W. Jones, Thomas Davy Laurence, and the clerk (Mr. Edgar C. Sanders). The chairman began by indicating the position, and the probable amount which would be required to meet the claims arising out of the reduction. He suggested that not less than three-fifths of the maximum levy allowed by the Act would be required. Mr. Isaac Morris proposed that the levy should be one-half the maximum, and this was seconded by Sir Charles Petrie. I moved as an amendment that the full amount should be levied, pointing out that, though it might produce more than was for the moment required, the full amount would be necessary as soon as we commenced our labours in another year, and that unless that amount was levied it would be November of next year before we could make further progress. My amendment was duly seconded by Mr. Doughan, and, being put to a vote, was supported by the four Liberal members of the Committee present at the meeting, but was defeated by the votes of the eight Conservative members of the Committee, who are the complainants in this case, the chairman (Sir Thomas Hughes) not voting. Upon my amendment being defeated a further amendment was moved and seconded—the chairman (Sir Thomas Hughes), to the best of my recollection, being either proposer or seconder—that three-fifths of the maximum charges should be levied. On a division this was defeated by eight votes to five, the chairman voting with myself and the other Liberal members, and the original proposition was then carried. During the discussion at this meeting one of the eight Conservative justices present stated that it would be unfair to the trade to levy the full amount of the whole tax. As regards the levy generally, there has been no experience up to the present as to how the Inland Revenue Department will deal with compensation claims, and in my opinion it is not safe to reckon on their allowing anything less than the full amount claimed. Again, the expenses of administration are at present an unknown quantity, and the source from which the money has to come has been reduced, and will be further reduced, by claims of owners of restaurants to reduction of the levy."

The LORD CHIEF JUSTICE (interposing in the reading of the affidavit).—This is getting rather far afield.

Mr. ASQUITH.—It was suggested that it was a wanton thing to levy more than was required. (Reading the affidavit)—"As to the administration of the Act, I have no hesitation in saying that it has been carried out on party lines—that is to say, that the decisions of the parties as to the number of licences to be suppressed and the consequent amount of the levy required has been influenced by the views of the respective political parties in the city as to the extent to which the Act should be applied in Liverpool." All that, added counsel, is relevant, whether we regret it or not. It all shows that party feeling runs high, and that administrative municipal functions are to a large extent conducted on party lines.

This is in no sense decisive of the matter, but it illustrates that you are here dealing with parties to whom, so far as the administration is concerned, certain considerations are applicable, and to whom a criminal information does not apply. There is no question here of protecting persons cloaked with judicial authority from imputations which might make them fear to discharge their duty in a spirit of impartiality. It was an administrative function, and Sir Edward Russell felt fully justified, in pursuit of the policy adopted by his paper, in making these temperate comments. These are the grounds upon which I submit that this rule should be discharged.

Mr. HORRIDGE, K.C., followed. He submitted that this was not a case for a criminal information. The question, he said, is not whether or not the article cannot be turned into a libel, or be thought to be a libel. If it is a libel, the parties have their remedy, but they are coming here for an exceptional remedy, and two considerations have to be taken into account with regard to it. The first is with regard to the position of the applicants. I do not say that the fact that they were acting administratively withdraws them from the purview and consideration of such a matter as this, but it does enlarge the purview of the court.

The LORD CHIEF JUSTICE.—I am not in the least saying that the article is strong enough to jusitfy a criminal information, but I think that the final tribunal that is to act with regard to the licences has certainly to act judicially.

Mr. HORRIDGE.—In this case they have not been guided by the rules of sworn evidence, which is the real test. When you are appearing before a magistrate not acting under the Licensing Act, it is a very different thing to say, "You have formed a view and taken a particular side," because he is not there to take a side. He has to come to court and hear the sworn evidence. Here there is no such thing.

The LORD CHIEF JUSTICE.—Different people have different opinions. Even if you take the view that it was a quasi-administrative duty, it does seem to me to require strong justification to impute to people who are performing that kind of duty that they did not desire to diminish the number of licences, &c. I am not in the least saying that that is strong enough for criminal information. When you say the statements made are clearly justifiable because they turn on political questions, that is going a very far way.

Mr. HORRIDGE.—The magistrates may think it very desirable that the number of houses must not be decreased, but increased, and they have a perfect right to bring that opinion to bear in giving their decision, apart altogether from the particular house; and all this article suggests is that certain magistrates have taken the interests of the licensing house, and have furthered that interest in considering the question.

Mr. JUSTICE RIDLEY.—It suggests that the justices hampered and obstructed those fairly endeavouring to work the Act. That is what the article appears to say.

Mr. HORRIDGE.—It deals with the Prime Minister's statement, that this is "the greatest measure of temperance reform." I am not saying here that we have to consider the question of whether it is a libel or not.

The LORD CHIEF JUSTICE.—You are quite right. I ought not to have interrupted you.

Mr. HORRIDGE.—I do not say the article is not capable of some reflection upon the gentlemen. What we are discussing is whether it is a gross libel, and we have very different considerations to take into acount. It enlarges the area of criticism, and makes it more difficult to say that this is so grossly unfair as to have a criminal information against it.

Mr. JUSTICE RIDLEY.—There is a sting in it.

Mr. HORRIDGE.—I do not deny that there is a sting in it. We are prepared to deal with that in the ordinary way, but I do say that the charges are not gross and scandalous, and should not be dealt with in the way now sought. I am not going to deal with the truth or not of it. What I say is, that it is impossible to find a single case in the law books in which a libel of this character has been dealt with in this manner. They have all been libels of a very extreme character. I submit that it is not such a libel as to be enforced by this proceedure.

CASE FOR THE RULE.

Sir EDWARD CLARKE.—My learned friends have been asking your lordships to recede from the position that was taken up when the rule was granted, and asking you to reject the steps that were taken for our protection, and I submit that the line that has been taken has made the matter rather more serious.

The LORD CHIEF JUSTICE.—Of course, you understand very well that we only granted the rule so that the matter might be discussed. We did not express any opinion.

Sir E. CLARKE.—I quite appreciate that; but, in showing cause against the rule, my learned friends seem to me to have made the matter rather more serious than it was before. The sting of this article is not in its imputation on a political party in Liverpool. Neither political party in Liverpool would have dreamed of invoking the assistance of a court of law on a matter of that kind. The really serious part of the libel it that it mentions by name a certain number of gentlemen who are clothed with a public duty, and are discharging a public duty, and who have made affidavits before you as to the way in which they have endeavoured to discharge that duty properly, and it is said of them at the end of the article that

they are acting as the representatives of a trade. That has nothing to do with a polititacl party at all. It is an imputation on them that they are allowing a private influence to affect them which ought not to be allowed to affect them in the discharge of their duty at all. If you look at the affidavit which has been made by Sir Edward Russell in answer to this rule, your lordships will see that he does not recede one inch from the position he took up in the article. He actually goes further in the affidavit than he went before, because in paragraph 7 of that affidavit you will find a very serious statement. He says: "In the comments made in the said article there was no desire to reflect on the personal conduct of the magistrates who were named as voting in the majority. The said magistrates had chosen to support a particular policy which, in the opinion of the 'Liverpool Daily Post and Mercury' was prejudicial to the public interest. The course which they had taken in limiting the levy more narrowly than in the opinion of the 'Liverpool Daily Post and Mercury' was required by the public interest was part of a definite administrative policy. This policy seemed to the 'Liverpool Daily Post and Mercury' not only in itself undesirable, but deserving of the most rigorous scrutiny in that those who had carried it out were all on one side of politics and that side the side popularly, and, in Liverpool, actually associated with the liquor trade." No one ventures in any one of these affidavits to suggest that any one of the magistrates mentioned by name in the article, and held up to public opprobrium has any connection whatever with the liquor trade. There is no suggestion of that at all, but what is suggested with regard to all these gentlemen is that they have allowed themselves to be influenced by motives from which they ought to keep themselves absolutely free, and when that is said I submit that it is impossible to look at it as other than an attack which would reduce the proper influence they ought to have in discharging the functions which had been given to them. My learned friend has drawn a distinction between the administrative and the judicial proceeding of magistrates. I submit that there is no ground for that distinction at all. A magistrate is a person clothed with certain duties, some of them judicial and some of them administrative, and it is just as serious an interference with his discharge of his duties to say of him that in an administrative capacity he was corrupt as to say that he was in a judicial manner corrupt, and it comes within the definition which my learned friend himself gave. He said a case in which a criminal information would be granted was a case where the libel was published by persons occupying judicial or official positions, and regarding the action taken by them in such positions. That definition covers this case. These are persons occupying judicial and official positions, and when they had to decide on a matter which they might decide either way—namely, the amount of the levy that was to be made for the purpose of dealing with this matter—they were exercising their authority as magistrates, and if they did exercise their authority as magistrates

in regard to and taking note of influences by which they ought not to have allowed themselves to be swayed for their own personal interests or the interests of a trade with which they were associated they would be unfitted to be magistrates, and they have no business to go on discharging those duties at all. But that having been said of them, they come to the court bringing themselves within the very definition my learned friend has given, and they ask the court to protect them. To say that these magistrates can bring individual actions for libel against Sir E. Russell for what is said in this newspaper is really an idle suggestion. Nobody could imagine that any such action would have any effective results, and the magistrates did not want to bring actions to put money into their pockets at the expense of Sir E. Russell What they do come to the court for is that they might be protected by the court in the way in which magistrates and persons occupying official positions have been protected for a long series of years.

The LORD CHIEF JUSTICE.—What was done before was that they could indict. They had to get a fiat under the Act of 1888 from a judge in chambers.

Sir E. CLARKE.—Yes, I think so. The rule having been granted, it is a matter in which I submit you will make the rule absolute without putting the persons to any further difficulty. We are before a higher authority than the judge in chambers, and dealing with a matter of great public importance. All the cases mentioned were brought before the court when the rule was moved. One case was brought before the court which has not been mentioned by my learned friend. That is the case of ex-parte Hoskyns, which is reported in 33 Justice of the Peace, page 68. That was the case in which it was attempted, unsuccessfully, before Chief Justice Cockburn, to set up that it was a political attack. I need not read the article there set out, but there are just a few sentences in the judgment which are important. Chief Justice Cockburn said:—"In this case I cannot help thinking that the articles went beyond the limit of fair comment, or even severe animadversion. Taking their whole scope and effect, they amounted to an imputation of partiality, arising from motives of political partisanship. It may be imputed to a man that he was a partisan in this sense, that, having strong opinions, he was unconsciously influenced by them, and if the tenour of these articles amounted to no more than that, and if it had been argued that it was undesirable to have on the Bench strong political partisans, whose minds might have been otherwise. But it strikes me that these articles go much further than that, and amount to a direct imputation against the magistrates of having been influenced in their judgment by intentional political partisanship." If my learned friend Mr. Asquith's position was accepted in the present case it would come within those words.

The LORD CHIEF JUSTICE.—I don't see that the political argument helps you one bit, although the other point is of importance. I don't think you can justify this by pretending that there is a Conservative on one side and a Liberal on the other, though I really don't know which side it is.

Sir E. CLARKE.—If that were the case the observations of the late Lord Chief Justice would be relevant, but I may point out that on the face of the words here there is a suggestion, if not of political partisanship, that they are acting for a particular trade which is affected by their action. As to the other case, I submit that there is no authority for the distinction which is sought to be drawn at all. The author of this article says that he comments upon this subject in the same way as he would comment upon the action of the Admiralty or the War Office, but those are not judicial matters, but administrative matters. This is a judicial matter, and the justices are public servants, and they are entitled to come before the court and obtain the assistance of the court in regard to a speedy and the only effective way in which they can obtain a remedy.

Mr. JUSTICE RIDLEY.—I have been thinking that if the words used in the article had been identical with the words in the affidavit you would not have obtained a rule, you would have no case.

Sir E. CLARKE.—Precisely; if the words used in the eighth paragraph of the affidavit had appeared in the article they would have negatived the imputation which is made in the article.

The LORD CHIEF JUSTICE.—That is what is passing through my mind—that there was no idea of reflecting upon these magistrates in any magisterial or judicial capacity.

Mr. JUSTICE RIDLEY.—No doubt the words of the affidavit are more moderate. He says he is not a partisan.

Sir E. CLARKE.—He has put in the accusation that they acted wilfully or wrongly.

The LORD CHIEF JUSTICE.—It is very unfortunate, because not only does the paragraph say that, but it says the result had no doubt been shrewdly foreseen.

Mr. JUSTICE RIDLEY.—Perhaps the writer of the article made the affidavit in his more sober moments.

Sir E. CLARKE.—If, in his more sober moments, it occurred to him, either by himself or his counsel, to say something of that kind, your lordships would have taken your own course with regard to it. But he has not done so, and Mr. Asquith says he does not recede one inch from the statement which was made.

Mr. JUSTICE RIDLEY.—But he has receded an inch and more in the affidavit.

Sir E. CLARKE.—Not by his counsel.

Mr. JUSTICE RIDLEY.—I agree.

Sir E. CLARKE.—Certainly. The natural consequence of that statement one would have expected to be an explanation that words had been used which had conveyed a serious imputation upon his fellow-townsmen, and upon gentlemen for whom he says he has respect, and he regretted it. But there has not been one word of regret in court to-day, and I ask your lordships to make this rule absolute.

Mr. TAYLOR.—May I say a word or two here to-day? It is an element to be considered in granting a rule whether, on reading the libel, the court thinks it is a sufficiently gross and scandalous libel to warrant this particular procedure being invoked. These seven persons named in the article were met to discharge a public duty. Twenty-nine houses having been fixed upon, the owners of which were to be compensated, the Committee were met to raise a sufficient sum for that purpose.

The LORD CHIEF JUSTICE.—They met to consider what amount should be raised.

Mr. TAYLOR.—Yes, and in order to consider that question they had to bring an honest judgment in acting—I don't say necessarily in a judicial capacity, though I do not say they were not—but they were met as public men to discharge a duty in the interests of the public.

The LORD CHIEF JUSTICE.—Are they all magistrates?

Mr. TAYLOR.—Yes, they are all magistrates, and could only act as magistrates under the statute. What does this article really say? It first says that the very modest programme which the general Bench had decided upon for the present year must involve an expenditure considerably in excess of the total that could be raised by yesterday's decision, and when you take the rest of the article commenting upon what these seven gentlemen have done it really does come to this, that the allegation is that they deliberately fixed a rate the result of which would be to raise a sum of money which they knew would not be sufficient to carry out the programme upon which the whole Bench had decided, and upon which they ought to have brought their best judgment, with proper honour to carry out effectively. The article suggests that they had raised a sum, the only effect of which could be to hamper and obstruct the decision of the whole Bench. That is as gross a charge of bringing to the discharge of a public office an intention to impede the proper carrying out of an Act of Parliament which they had met there to carry out—to impede it in order to benefit and wrongly benefit in an illicit manner those whom it is alleged they represented—as could be made. An attempt has been made to discriminate between these gentlemen when acting in a judicial and when acting in an administrative capacity, but to bring them within

the rule it is sufficient that they are public persons. In the Queen v. Labourchere the whole matter is discussed, and the ruling there laid down is to be found in the reports. The passage is as follows:—"A libel is made either against a private man or against a magistrate or public person. If it be against a private person it deserves a severe punishment, for although the libel be made against one, yet it incites all those of the same family, kindred, or society to revenge, and so tends *per consequens* to quarrels and breach of the peace, and may be the cause of the shedding of blood, &c. If it be against a magistrate or other public person"—it does not speak of judicial capacity, my lord—"it is a greater offence, for it concerns not only the breach of the peace, but also a scandal of government."

The LORD CHIEF JUSTICE.—I suppose you suggest, Mr. Taylor, that, while recognising that the old principle has been of late years very much narrowed, which, I think, nobody can deny, yet, when seven gentlemen performing one set of magisterial duties are picked out, a judge in chambers would have allowed an indictment by one of them as against Sir Edward Russell.

Mr. TAYLOR.—Yes, my lord; I think so.

The LORD CHIEF JUSTICE.—Is there any authority as to whether all seven could have prosecuted by one indictment?

Mr. TAYLOR.—I should think that was so in principle, but I am not provided with authority on that precise point. I was merely pointing out that the passage which I read is the original passage on which apparently the whole of this law is founded and has been discussed. It is not limited to magistrates, but applies to public persons. I submit, my lord, that it really does not require much discussion to show that this is a scandalous case of libel. I have only one other word to add. It is this. It is only at the last moment, when the other side are here and discuss the mater, and then bring forward their affidavits, that this article is said to be merely a political comment; but the sting remains, because Mr. Asquith at the last moment has said—

The LORD CHIEF JUSTICE.—Yes, yes—that Sir Edward Russell does not withdraw one iota of what he said in the article. He has said that the justices were exercising their powers under sub-section 4, section 5.

Mr. TAYLOR.—Yes, my lord.

The LORD CHIEF JUSTICE.—Under which section were they acting in deciding what the amount of rate should be?

Sir E. CLARKE.—The earlier section.

The LORD CHIEF JUSTICE.—You had better find it, and give it to me. I know what the proposition is, but I want to see what they were acting under; section 3-1, I gather.

Mr. TAYLOR.—Yes; section 3-1.

The LORD CHIEF JUSTICE.—But, assuming it had not been delegated—this question of the amount to be levied—were they considering what certificate they should give the Secretary of State?

Sir E. CLARKE.—No, my lord; they have to give a certificate if they make a levy.

The LORD CHIEF JUSTICE.—I know; but if they make a levy of a less amount, have they to give a certificate?

Sir E. CLARKE.—No, my lord; only if they make no levy at all.

The LORD CHIEF JUSTICE.—Under what section do they determine there should be one, Sir Edward?

Sir E. CLARKE.—It is under the 4th sub-section of section 5.

The LORD CHIEF JUSTICE.—That is only the delegation. What I want to see is what the powers of quarter sessions would have been. I understand why it was delegated to these gentlemen.

Sir E. CLARKE.—That is under section 3-1.

The LORD CHIEF JUSTICE.—That is what the quarter sessions shall impose on the rates.

Sir E. CLARKE.—Yes, my lord.

The LORD CHIEF JUSTICE.—Where is the statutory power to fix the amount of the imposition?

Sir E. CLARKE.—The charges on the rates which are to be imposed are graduated in the same proportion as the rate shown in the scale.

The LORD CHIEF JUSTICE.—Then they only certify when there is no levy?

Sir E. CLARKE.—That is all.

The LORD CHIEF JUSTICE.—Then this decision is as to what the amount of the rate shall be?

Sir E. CLARKE.—Yes, that is all.

The LORD CHIEF JUSTICE.—I suppose the question of the amount is involved in section 3-1, as to quarter sessions imposing charges on the rates?

Sir E. CLARKE.—Yes, my lord. Then the delegation hands that over.

THE DECISION.

Their lordships having consulted,

The LORD CHIEF JUSTICE said:—When this rule was granted I departed from the course usually followed in granting rules nisi by pointing out that we considered there was a serious matter to be discussed in order that the court might come to a right decision

as to whether it was a case for a criminal information or not, and that we were not in any way expressing any opinion in granting the rule nisi. That point has been discussed, and the effect of the very able and careful argument on behalf of Sir Edward Russell and Mr. Jeans. (To Sir. E. Clarke:) Do you want to say anything more about Mr. Jeans?

Sir E. CLARKE.—No, my lord. It is not denied that he was the printer and publisher.

Mr. HORRIDGE.—He is charged with being the editor

The LORD CHIEF JUSTICE.—That does not matter for this purpose. Do you say information ought to go against him?

Mr. HORRIDGE.—There is a passage in Sir Edward Russell's affidavit—

Sir E. CLARKE.—He does not deny he is printer and publisher.

Mr. HORRIDGE.—It is sworn he is editor.

The LORD CHIEF JUSTICE.—But the question is what is he in fact?

Mr. HORRIDGE.—It has been decided in the case of the King v. Stanger that parties in such a case must come with complete evidence. There is a way to prove.

The LORD CHIEF JUSTICE.—The result of the argument has been to force me to the conviction that this rule must be made absolute. I am quite aware, and have often recognised, that the practice with regard to a criminal information has of recent years been very properly narrowed. I have had occasion to point that out several times during the few years I have been on the bench. I know it is confined to special cases, and it is said that it should only be applied in order to protect public persons in the discharge of their public duties. I do not want to draw any distinction between persons who are in a high position and persons who are in a low position. I do not think that would be a right distinction to draw, especially as in these days people of, comparatively speaking, humble position are sometimes called on to perform very responsible duties, and are entitled to as much protection as the highest in the land. If there had been a case of honest political criticism upon the conduct of an individual, or possibly on the conduct of more than one individual—if this could be regarded and read by the ordinary, commonplace mind as being a mere discussion as to the way in which judicial or quasi-judicial functions had been exercised, I should be very slow indeed to allow the criminal law to be put in force in that way. But it seems to me I must point out, having regard to the criticism and to the argument on the criticism which has been addressed to the court, that what we have to consider is whether we should sanction a criminal proceeding of this kind on the same kind of ground as would be considered by a judge at chambers if

it had been an indictment against an individual where a rule has been obtained to issue a criminal proceeding against the editor or proprietor of a newspaper. But I have said before, and I wish to repeat, that I recognise that in exceptional cases, and under exceptional circumstances, this protection ought to be given. I decline to recognise the theory that no protection should be offered by criminal information simply because people are not acting in a judicial capacity. There are authorities which show that there it ought not to be applied; but I prefer to say that, in my opinion, it would be highly detrimental to the public interest if public officials called on to perform public acts were not entitled to the same protection simply because the particular act they were then doing was said not to be a judicial act. It is, in fact, inverting the proposition. It is attempted to be argued that because it is understood there is protection for officials when they are acting judicially, they ought not to be protected when they are not. It will be found—and the authorities which Mr. Asquith has read are illustrative of this—that this protection has been accorded where persons are discharging public duties as well as where they are discharging judicial duties. But there are other considerations which induce me to come to the conclusion that this case is very near the border line. It must be remembered we are dealing with a new Act of Parliament, and with new duties imposed on magistrates. It cannot be disputed that, if it had been simply the renewal or the refusal to renew a licence at quarter sessions, and the magistrates had been acting and sitting as magistrates to decide whether a licence should be renewed or not, they would have been acting judicially. What is their position here? The quarter sessions has to decide finally whether or not licences are to be renewed or refused, subject to compensation. I do not wish to express any opinion as to what its effect would be, but I have no doubt, as at present advised, that, exercising that jurisdiction, the quarter sessions are acting quasi-judicially, if not judicially. In this case the statute contemplates the delegation of the duties of the quarter sessions to a committee, and one of the things that the Committee has to decide is what rates shall be imposed in the locality under section 3-1, in order to form a fund out of which compensation shall be paid, and if they decide that no amount shall be imposed, they have to certify that. It is enough for these purposes to say that in my opinion it is not accurate to describe the functions of these magistrates as being purely administrative, but I wish it also to be understood that, it being public duty to be performed impartially and as magistrates, I must not be thought to concur in the opinion that they are entitled to less protection because this particular act in which they were engaged might be said to be not strictly judicial in character. With regard to the passages which were read from the Queen v. Bolter, the Aquarium case, and the Queen v. Howard, they were passages which had no relation to the subject matter we are now considering. They were only expressions

of opinion as to what was the position of persons who were exercising the functions of licensing justices as a preliminary licensing authority under this Act of Parliament, and they certainly had no relation, and were intended to have no relation, to such a veto as we are now considering. I recognise, therefore, that in order to justify the court in making the rule aboslute for criminal information it must be satisfied that the persons who are seeking the protection in question—they must in such a case as this satisfy the court that they were exercising a public duty as magistrates, and that in performing these duties they were discharging duties imposed on them by statute. Certainly to anyone who has followed the agitation on the Licensing Question and the legislation which led up to the Act of 1904 there are few branches of public duty which require a greater demand upon impartiality and fair dealing. I have said this much as clearly as I could in order that it may be recognised what is the modern state of the law and the modern application of the rule regarding criminal information. What is this case? All the seven gentlemen who voted in favour of the reduction of the amount to be levied are named, all of them, in the libel, or the alleged libel. The gentlemen who opposed them are referred to as being in favour of fixing the maximum amount, and the chairman as supporting a compromise. The article proceeds:—"These gentlemen will hardly pretend that they were influenced in the course they took by the desire to diminish the number of licences in the city." I think, as regards that paragraph, that Mr. Asquith's criticism was just, that it was in the nature of comment upon what might have been done by one side or the other. If that had been the only criticism I should have agreed entirely with Mr. Asquith that it was not a case for a criminal information; but it must be taken in connection with the passage in which the names are mentioned and contrasted with other names. Because what follows? Statements were made in the article to which no exception could be taken as to the amount which would be required, whether it was £21,000 or only £17,500. I do not think that makes much difference. That would be fair comment; but there follows this:—"The dominant party on the Bench do not desire to facilitate the working of the"—I will leave out the laudatory phrases from a political speech—"they do not desire to diminish the number of licences in this city, but rather to hamper and obstruct those who are striving to effect, without gross injustice and discontent, a sorely-needed reduction." I can only read that, after the fullest consideration, as any fair-minded man would, as a suggestion that these gentlemen did not approach the question fairly or with one desire to discharge a public duty fairly, but were striving to prevent the Act being carried into effect. The article proceeds:—"The effect of the Committee's decision will be to make the rate of reduction actually less than it was under the old order of things, a result which no doubt was shrewdly foreseen. We congratulate the trade on the ability and courage of their friends—we had almost said their re-

presentatives—on the Licensing Committee." I know the high position filled by Sir Edward Russell, and I note his counsel's statement that he was influenced by the most honest and straightforward motives, but he says in one breath that he did not wish to attack these gentlemen's motives; yet he has given no explanation of the words, "A result which no doubt was shrewdly foreseen." There can be but one thing aimed at when so alluding to the conduct of these gentlemen; and then there are the words, "We congratulate the trade on the ability and courage of their friends," and then are interposed the words, "We had almost said their representatives—on the Licensing Committee." I know it is very easy for us sitting here to criticise such language—and we ought to be very careful in judicial criticism—and one ought to make every allowance possible for a sudden thought which occurs to the mind of some brilliant writer under the pressure of publication and on the moment, but here is a public charge persisted in—that these seven gentlemen who voted had been actuated by these motives. In my opinion, this is one of the cases in which, for the protection of public men in the discharge of a public duty, the remedy by criminal information still remains. The doubt I had when I granted this rule—and I had grave doubts as to whether the article was one which came within the rules recently applied to criminal information—has been removed, and the case is one in which there is no alternative but to make the rule absolute. I think it will be sufficient to make it absolute only against Sir Edward Russell, because from the position of Mr. Jeans—and Mr. Horridge has stated it—he was not a party to the publication of this article. So far as he is concerned, the rule will be discharged without costs, but the rule will be made absolute in the case of Sir Edward Russell.

Mr. Justice Lawrence and Mr. Justice Ridley concurred.

Order accordingly.

Application in London for case to be heard in Liverpool.—Granted.

THE KING *v.* RUSSELL.

INFORMATION.

LANCASHIRE (WEST DERBY DIVISION) TO WIT.

Be it remembered that James Robert Mellor, Esquire, Coroner and Attorney of our present Sovereign Lord the King, in the King's Bench Division of His Majesty's High Court of Justice, before the King himself, who for our said Lord the King in this behalf prosecutes in his own proper person comes here into Court before the King himself at the Royal Courts of Justice, London, on the 9th day of August, in the year of Our Lord nineteen hundred and five, and for our said Lord the King gives the Court here to understand and be informed that Isaac Morris, Frederick William Frodsham, Charles Herbert Giles, Thomas Menlove, Richard Isaac Richardson, William Oulton, and Morris Paterson Jones, Esquires, and Charles Petrie, Knight, were before and at the several times of the publication of the false and scandalous libels in this and the next subsequent counts of this information hereafter set forth, and still are, Justices of the Peace in and for the city of Liverpool, in the county of Lancaster, and members of the Licensing Committee of the Justices of the Peace in and for the said city, which said Committee were appointed under the Licensing Act, 1904; and the said Coroner and Attorney further gives the Court here to understand and be informed that Edward Richard Russell, Knight, of the said city, contriving and wickedly and maliciously intending to injure and vilify the said Isaac Morris, Frederick William Frodsham, Charles Herbert Giles, Thomas Menlove, Richard Isaac Richardson, William Oulton, and Morris Paterson Jones, and the said Charles Petrie, Knight, as such Justices and members of the said Committee as aforesaid, and to provoke and excite them to commit a breach of the peace, and to bring them into great contempt, scandal, infamy, and disgrace, on the thirteenth day of July in the year of Our Lord nineteen hundred and five, did falsely and maliciously compose and publish in a certain newspaper, called the "Liverpool Daily Post and Liverpool Mercury," in the said city of Liverpool, a certain false, scandalous, malicious, and defamatory libel, containing divers false, scandalous, malicious, and defamatory matters and things of and concerning the said Isaac Morris, Frederick William Frodsham, Charles Herbert Giles, Thomas Menlove, Richard Isaac Richardson, William Oulton, Morris Paterson, Jones, and the said Charles Petrie, Knight, and of and concerning them as such Justices and members

of the said Licensing Committee as aforesaid according to the tenor and effect following, that is to say:—

"In the course of the debate on the third reading of the Licensing Act the Prime Minister said—'I am perfectly convinced that when the Bill is working, and when it is seen that by this Bill alone you can without gross injustice and discontent really diminish the number of licences in this country, all parties, forgetting the differences which have unhappily divided us for the last three months, will admit that this is the greatest contribution ever made to the cause of temperance reform.' Brave words these! Now let us see how this greatest contribution ever made to the cause of temperance reform is operating in Liverpool to diminish the number of licences. Yesterday there was a meeting of the Licensing Committee (meaning thereby the Committee aforesaid, whereof the said eight Justices are members) to fix the rate of the levy on licensed houses to form the compensation fund. Four members of the Committee—Messrs. Charles Jones, Henderson, T. D. Lawrence, and Doughan—were in favour of fixing the rate at the maximum allowed by the Act. Sir Thomas Hughes, probably feeling that it would be impossible to persuade the Committee to impose the maximum, suggested three-fifths. Even this modest compromise was rejected, and the Committee decided, by the votes of Sir Charles Petrie and Messrs. I. Morris, Oulton, Frodsham, Giles, Menlove, M. P. Jones, and Richardson (meaning the said eight Justices), to fix the rate at one-half the maximum. These gentlemen (meaning the said eight Justices) will hardly pretend that they were influenced in the course they took by a desire to diminish the number of licences in the city. The sum which it will be possible to raise in the current year at the fixed rate will amount to about £17,500. Now, apart from expenses of administration, which will be considerable, the very modest programme which the Bench have decided on for the present year must involve an expenditure considerably in excess of the total that can be raised by yesterday's decision. The Bench have not ventured to propose the extinction of a single full licence, but they have picked out a few of the '69 beer-houses in the A and B divisions for abolition under the Act. Compensation for a few of these, amounting in all to £8,000, has been fixed by mutual agreement, and the rest have been referred, as provided by the Act, to the arbitration of the Inland Revenue authority. The amount in these cases is not likely to be less than £13,000. The matter, therefore, stands thus: For the extinction of the selected licences—licences which the Bench have decided ought to be extinguished forthwith in the interests of the community—a sum of not less than £21,000 is required, and now the Licensing Committee decline to levy a larger sum than £17,500. There is only one explanation of this state of affairs. The dominant party on the Bench (meaning thereby the said eight Justices) do not desire to facilitate the working of 'the greatest contribution ever made to the cause of temperance reform;'

they do not desire to diminish the number of licences in the city, but rather to hamper and obstruct those who are striving to effect without 'gross injustice and discontent' a sorely-needed reduction. The effect of the Committee's decision will be to make the rate of reduction actually less than it was under the old order of things, a result which no doubt was shrewdly foreseen. We congratulate 'the trade' (meaning thereby the wine, beer, and spirit trade) upon the ability and courage of their friends (meaning thereby the said eight Justices)—we had almost said their representatives (again meaning the said eight Justices)—on the Licensing Committee"

meaning thereby that the said Isaac Morris, Frederick William Frodsham, Charles Herbert Giles, Thomas Menlove, Richard Isaac Richardson, William Oulton, Morris Paterson Jones, and Sir Charles Petrie had acted in their capacity as Justices and members of the said Licensing Committee in an unfair, dishonest, and corrupt manner; and that they, the said eight Justices, did not desire in their said capacity to promote the temperance, sobriety, and well-being of the said city; and that they, the said eight Justices, availed themselves of the opportunities afforded them by their said capacity to hamper and obstruct such other Justices and members of the said Committee as were desirous of promoting the temperance, sobriety, and well-being of the said city; and that they, the said eight Justices, corruptly and dishonestly acted in their said capacity as the representatives of the wine, beer, and spirit trade, and had corruptly and dishonestly become the tools and creatures of the said trade; and that they, the said eight Justices, were not actuated by fair or impartial motives in the exercise of their duties as Justices and members of the said Committee, but wished to obstruct and defeat the administration and provisions of the Licensing Act, 1904; and that in the discharge of their said duties they were actuated by a wicked and corrupt desire to favour the owners and holders of licences; which said false, scandalous, malicious, and defamatory libel the said Edward Richard Russell did then publish, to the great damage, scandal, and disgrace of the said eight Justices, in contempt of our said Lord the King, to the evil and pernicious example of all others in like case offending, and against the peace of our said Lord the King, his Crown, and dignity.

SECOND COUNT.

And the said Coroner and Attorney of our said Lord the King, for our said Lord the King, further gives the Court here to understand and be informed that Edward Richard Russell, Knight, of the city of Liverpool, in the county of Lancaster, contriving and wickedly and maliciously intending to injure and vilify certain members of the Licensing Committee of the Justices of the Peace in and for the said city, to wit, Isaac Morris, Frederick William Frodsham, Charles Herbert Giles, Thomas Menlove, Richard Isaac Richardson, William Oulton, and Morris Paterson Jones, Esquires,

and Charles Petrie, Knight, as such Justices and members of the said Committee as aforesaid, and to provoke and excite them to commit a breach of the peace, and to bring them into great contempt, scandal, infamy, and disgrace, on the thirteenth day of July in the year of Our Lord nineteen hundred and five, did falsely and maliciously cause and procure to be published in a certain newspaper, called "The Liverpool Daily Post and Liverpool Mercury," in the said city of Liverpool, a certain false, scandalous, malicious, and defamatory libel, containing divers false, scandalous, malicious, and defamatory matters and things of and concerning the said Isaac Morris, Frederick William Frodsham, Charles Herbert Giles, Thomas Menlove, Richard Isaac Richardson, William Oulton, Morris Paterson Jones, and the said Charles Petrie, Knight, and of and concerning them as such Justices and members of the said Licensing Committee as aforesaid, according to the tenor and effect following, that is to say:—

[Leading Article again quoted.]

meaning thereby that the said Isaac Morris, Frederick William Frodsham, Charles Herbert Giles, Thomas Menlove, Richard Isaac Richardson, William Oulton, Morris Paterson Jones, and Sir Charles Petrie had acted in their capacity as Justices and members of the said Licensing Committee in an unfair, dishonest, and corrupt manner; and that they, the said eight Justices, did not desire in their said capacity to promote the temperance, sobriety, and well-being of the said city; and that they, the said eight Justices, availed themselves of the opportunities afforded them by their said capacity to hamper and obstruct such other Justices and members of the said Committee as were desirous of promoting the temperance and well-being of the said city; and that they, the said eight Justices, corruptly and dishonestly acted in their said capacity as the representatives of the wine, beer, and spirit trade, and had corruptly and dishonestly become the tools and creatures of the said trade; and that they, the said eight Justices, were not actuated by fair or impartial motives in the exercise of their duties as Justices and members of the said Committee, but wished to obstruct and defeat the administration and provisions of the Licensing Act, 1904; and that in the discharge of their said duties they were actuated by a wicked and corrupt desire to favour the owners and holders of licences; which said false, scandalous, and defamatory libel the said Edward Richard Russell did then cause and procure to be published, to the great damage, scandal, and disgrace of the said eight Justices, in contempt of our said Lord the King, to the evil and pernicious example of all others in like cases offending, and against the peace of our said Lord the King, his Crown, and dignity.

THIRD COUNT.

And the said Coroner and Attorney of our said Lord the King, for our said Lord the King, further gives the Court here to

understand and be informed that Edward Richard Russell, Knight, of the city of Liverpool, in the County of Lancaster, contriving and wickedly and maliciously intending to injure and vilify certain members of the Licensing Committee of the Justices of the Peace in and for the said city, to wit, Isaac Morris, Frederick William Frodsham, Charles Herbert Giles, Thomas Menlove, Richard Isaac Richardson, William Oulton, and Morris Paterson Jones, Esquires, and Charles Petrie, Knight, as such Justices and members of the said Committee as aforesaid, and to provoke and excite them to commit a breach of the peace, and to bring them into great contempt, scandal, infamy, and disgrace, on the thirteenth day of July in the year of our Lord nineteen hundred and five, did falsely and maliciously print and publish, in a certain newspaper, called "The Liverpool Daily Post and Liverpool Mercury," in the said city of Liverpool, a certain false, scandalous, malicious, and defamatory libel, containing divers false, scandalous, malicious, and defamatory matters and things of and concerning the said Isaac Morris, Frederick William Frodsham, Charles Herbert Giles, Thomas Menlove, Richard Isaac Richardson, William Oulton, Morris Paterson Jones, and the said Charles Petrie, Knight, and of and concerning them as such Justices and members of the said Licensing Committee as aforesaid, according to the tenor and effect following, that is to say:—

[Leading Article again quoted.]

meaning thereby that the said Isaac Morris, Frederick William Frodsham, Charles Herbert Giles, Thomas Menlove, Richard Isaac Richardson, William Oulton, Morris Paterson Jones, and Sir Charles Petrie had acted in their capacity as Justices and members of the said Licensing Committee in an unfair, dishonest, and corrupt manner; and that they, the said eight Justices, did not desire in their said capacity to promote the temperance, sobriety, and well-being of the said city; and that they, the said eight Justices, availed themselves of the opportunities afforded them by their said capacity to hamper and obstruct such other Justices and members of the said Committee as were desirous of promoting the temperance, sobriety, and well-being of the said city; and that they, the said eight Justices, corruptly and dishonestly acted in their said capacity as the representatives of the wine, beer, and spirit trade, and had corruptly and dishonestly become the tools and creatures of the said trade; and that they, the said eight Justices, were not actuated by fair or impartial motives in the exercise of their duties as Justices and members of the said Committee, but wished to obstruct and defeat the administration and provisions of the Licensing Act, 1904; and that in the discharge of their said duties they were actuated by a wicked and corrupt desire to favour the owners and holders of licences; which said false, scandalous, malicious, and defamatory libel the said Edward Richard Russell did then print and publish, to the great damage, scandal, and disgrace, of the said eight Justices,

in contempt of our said Lord the King, to the evil and pernicious example of all others in like cases offending, and against the peace of our said Lord the King, his Crown, and dignity.

Whereupon the said Coroner and Attorney of our said Lord the King, for our said Lord the King, prays the consideration of the Court here in the premises, and that due process of law may be awarded against him, the said Edward Richard Russell, in this behalf to make him answer to our said Lord the King touching and concerning the premises aforesaid.

JAMES R. MELLOR.

PLEA.

And now, that is to say, on the 18th day of November, 1905, before our Lord the King, in the King's Bench Division of his Majesty's High Court of Justice, at the Royal Courts of Justice, London, comes the said Edward Richard Russell, Knight, by Basil Field, his solicitor, and, having heard the information read, he says that he is not guilty thereof, and hereupon he puts himself upon the country. And James Robert Mellor, Esquire, Coroner and Attorney of our said Lord the King, before the King himself, who for our said Lord the King in this behalf prosecutes, does the like.

And for a further plea, the said Edward Richard Russell, Knight, pursuant to the statute in that behalf, says that our said Lord the King ought not further to prosecute the said information against him, because he says that it is true that

The said eight Justices were not influenced in the course they took by any desire to diminish the number of licensed houses in the city, and that

The dominant party on the Bench (meaning thereby the said eight Justices) do not desire to facilitate the working of the said Licensing Act, and that

The said eight Justices do not desire to diminish the number of licences in the city of Liverpool, and that

The said eight Justices desired to hamper and obstruct those who were striving to carry out a sorely needed restriction of the said licences in the said city of Liverpool, and that

The effect of the Licensing Committee's decision will be to make the rate of reduction of the said licences less than it was under the old order of things, to wit, before the said Licensing Act was passed, and that

The said eight Justices knew that this was the case, and that

In taking the course which they elected to take in this matter the said eight Justices were acting in the interests of the licensed trade, and not in the interests of the public, and that

In taking the course aforesaid, the said eight Justices were acting as the friends and almost as the representatives of the said licensed trade.

Wherefore the said Edward Richard Russell, Knight, says that the said alleged libel consists of allegations true in substance and in fact, and of fair and reasonable comments thereon.

Further, as regards the innuendos charged in the said information, to wit, that the said Edward Richard Russell, Knight, by the alleged libel aforesaid meant that the eight Justices aforesaid had acted in a dishonest and corrupt manner, or in a manner consciously unfair, and had been moved by a wicked and corrupt desire to favour the owners and holders of licences, the said Edward Richard Russell, Knight, says that the words alleged to have been used in the aforesaid alleged libel were not composed and published, caused and procured to be published, or printed and published with, nor do they bear any such meaning as is alleged.

With these exceptions only, the said Edward Richard Russell, Knight, says that the words alleged to have been used in the aforesaid alleged libel are, both in their natural and proper meaning and in the meanings alleged in the information aforesaid, true in substance and in fact.

And the said Edward Richard Russell, Knight, says that before and at the time of the said information mentioned the following facts existed:—

For several years prior to the passing of the Licensing Act, 1904, very important action had been taken by the Justices of the Peace for the city of Liverpool for the better regulation of the licensed trade and for the reduction in the number of licences.

Previously to the inauguration of this policy, Liverpool has been, in a greater degree than almost any city in England, afflicted by the curse of excessive drinking; but, in consequence of this policy, between the years 1889 and 1904 over 500 licences had been extinguished in the city of Liverpool.

Not only in the city of Liverpool, but throughout the country, this policy of the Liverpool Justices had been recognised as a great improvement in administration and as productive of considerable social amelioration, and during all this period it had been the part of the "Liverpool Daily Post" and its Editor to do all that was possible to strengthen the hands of those who were endeavouring to reduce the facilities for excessive drinking in the city of Liverpool.

During this period the Justices of the Peace for the city of Liverpool were, as regards membership in the two great political parties in the State, almost equally divided.

Those Justices who belonged to the Liberal party were all in favour of the aforesaid policy, but the majority of those who belonged to the Conservative party were against it. Owing, how-

ever, to the fact that Sir Thomas Hughes, the Chairman of the Licensing Justices, and one or two other Conservative Justices made common cause with the Liberal Justices in taking a firm stand in favour of this policy, the progress aforesaid was rendered possible.

In 1903 seventeen Justices were added to the Licensing Bench, most of them professing members of the Conservative party.

At the end of 1904, just before the Licensing Act came into operation, a further addition of twenty-four Justices were made to the Bench, most of them again professing members of the Conservative party.

In consequence of the addition of these forty-one Justices, at the time when the Licensing Act of 1904 came into operation the Conservative Justices had a substantial majority upon the Bench.

With the object of avoiding an unseemly struggle for party predominance upon this Committee, it was publicly suggested that Sir Thomas Hughes, together with another prominent Conservative, Sir Thomas Royden, should endeavour to agree upon the persons who should serve upon it. Strong exception was taken to this course in an article in the "Liverpool Courier" (the recognised organ of the Conservative party in Liverpool), and the suggestion was dropped.

The Conservative Justices, being in a majority, demanded and obtained ten representatives upon the Licensing Committee of sixteen which was subsequently appointed under the provisions of the Licensing Act, 1904.

The arrangement by which the Conservative party obtained ten representatives upon the Licensing Committee was made at a conference held at the office of the said Isaac Morris, who represented the Conservative party in the matter, the Liberal party being represented by one John Henderson. The said Isaac Morris rejected the proposal of the said John Henderson, that seven of each party should be appointed, with Sir Thomas Hughes as Chairman, and demanded that his party should be represented upon the Licensing Committee in proportion to their majority upon the Bench.

In consequence, the Committee came into existence with definite party proportions, ten Conservative representatives and six Liberal, and, except that Sir Thomas Hughes usually voted with the Liberal members, these proportions were almost invariably reproduced in all divisions taken on matters of policy upon the Licensing Committee.

The party in the majority upon the Committee is the party which throughout as a party opposed the policy aforesaid which the Licensing Justices had carried out to the great benefit of the city of Liverpool.

This party is the party to which the liquor trade in Liverpool lends its support and organisation for political purposes.

The majority of the Committee had proceeded to force upon the reluctant minority a policy far more favourable to the liquor trade than the policy pursued by the great majority of Licensing Committees throughout the country.

The majority had proceeded against the wishes of the minority to schedule for extinction and compensation only about two-fifths of the number of licensed premises which a full levy upon the licensed trade would have enabled them to schedule.

The majority had then proceeded against the wishes of the minority to levy only half the full amount of the levy which they were entitled to make. By so doing, the majority incurred a risk that the amount levied would be insufficient to compensate the houses scheduled, the claims then under consideration exceeding the total amount of the levy; and they further deprived themselves of a large sum which they could have usefully carried over to the next year's account.

Although the Prime Minister had claimed that the Licensing Act of 1904 was the greatest contribution ever made to the cause of temperance reform, the effect of the policy of the Liverpool Licensing Committee has been to make the rate of reduction under the Act of 1904 less than under the law as previously administered in Liverpool, by reason of which facts the citizens of Liverpool have been grievously injured; wherefore, especially as the meetings of the said Licensing Committee were held in private, it was for the public benefit that the said matters so charged in the said information should be published, and this the said Edward Richard Russell, Knight, is ready to verify. Wherefore he prays judgment, and that by the Court here he may be dismissed and discharged from the said premises in the said information above specified.

Dated the 18th day of November, 1905.

EDWARD G. HEMMERDE.

REPLICATION.

And James Robert Mellor, Esquire, Coroner and Attorney of our Sovereign Lord the King, who for our said Lord the King in this behalf prosecutes, says that, by reason of anything the said Plea alleged, our Lord the King ought not to be precluded from further prosecuting the said information against the said Edward Richard Russell, Knight, because he says that he denies the said several matters in the said Plea alleged, and says that the same are not nor are nor is any or either of them true, and avers that the several allegations in the said Plea are irregular, irrelevant, and scandalous in form, and particularly that the matter alleged in support of so much of the said Plea as consists of justification affords, if true, no

excuse for the writing complained of in the said information, and because he affirms that the said Plea contains no sufficient answer to the several separate counts of the said information; wherefore, for want of a sufficient Plea in this behalf, and in relation to the premises, the said Coroner and Attorney for our said Lord the King joins issue upon the said Plea, and prays that the several matters in the said Plea be enquired of by the country and that the said Edward Richard Russell, Knight, be convicted of the premises above charged upon him.

Dated this 22nd day of November, 1905.

F. E. SMITH.

TRIAL AT THE ASSIZES.

THE CASE FOR THE PROSECUTION.

The proceedings in the criminal action for libel against Sir Edward Russell, editor-in-chief of the "Daily Post and Mercury," were opened yesterday (December 7th, 1905), before Mr. Justice Bray and a common jury, at the Liverpool Assizes. Plaintiffs are the following eight members of the Licensing Committee of the Liverpool city magisterial bench:—Sir Charles Petrie, Messrs. Isaac Morris, F. W. Frodsham, Chas. Herbert Giles, Thomas Menlove, William Oulton, Morris P. Jones, and Dr. R. I. Richardson.

Mr. W. F. Taylor, K.C., Mr. F. E. Smith, and Mr. W. H. S. Oulton (instructed by Messrs. Payne and Frodsham) appeared for the prosecution; and Mr. Rufus Isaacs, K.C., Mr. Horridge, K.C., and Mr. Hemmerde (instructed by Messrs. Oliver Jones, Billson, and Company) were for the defendant.

THE PLEADINGS.

The jury having been sworn,

Mr. F. E. SMITH said:—In the matter of this information, James Robert Mellor, Coroner and Attorney to the King, causes the Court to be informed that certain justices of the peace in the city of Liverpool—Isaac Morris, Frederick William Frodsham, Charles Herbert Giles, Thomas Menlove, Richard Isaac Richardson, William Oulton, Morris P. Jones, and Sir Charles Petrie—have been attacked by certain false, scandalous, and malicious libels, and that the defendant, Sir Edward Russell, editor of the "Liverpool Daily Post," did falsely and maliciously compose and publish in that newspaper the said libels. A further count in the information charges that Sir Edward Russell did falsely and maliciously cause and procure to be published the same libels; and a further count charges that he did falsely and maliciously print and publish in the said paper the libels that are complained of. The libel is that the said justices "do not desire to diminish the number of licences in the city, but rather to hamper and obstruct those who are striving to effect, without 'gross injustice and discontent,' a sorely needed reduction. The effect of the committee's decision will be to make the rate of reduction actually less than it was under the old order of things, a result which, no doubt, was shrewdly foreseen. We congratulate 'the trade' (meaning the wine and spirit trade) on

the ability and courage of their friends (meaning thereby the said eight justices)—we had almost said their representatives—on the Licensing Committee." Sir Edward Russell, in his plea in defence, has stated that the alleged libels were true in substance and in fact, and he has alleged further that not only were they true, but that it was for the public advantage that they should be published and that they should be known. The complainants reply, the coroner causes the court to be informed, that the said plea is not sufficient in substance, that the said libel was not true, and that there was nothing contained in the said publication which it was in the interest of the public to have published. On these pleadings issue is joined.

Mr. RUFUS ISAACS, K.C.—You have left out the most important plea of the lot.

His LORDSHIP.—There is the plea of not guilty.

Mr. RUFUS ISAACS.—There is the plea of not guilty, and there is also the plea that there is no imputation of corrupt and dishonest motives.

MR. TAYLOR'S OPENING SPEECH.

Mr. TAYLOR, K.C., in his opening address for the prosecution, said:—The issues have been clearly stated by Mr. Smith, with the assistance of Mr. Isaacs. This proceeding is by way of criminal information in respect of an alleged libel alleged to have been composed, printed, and published by Sir Edward Russell, editor of the "Liverpool Daily Post and Mercury," referring to eight gentlemen who occupy the position of justices of the peace in Liverpool. The date of that libel is the 13th of July in this year. Inasmuch as the reference in the document which is complained of is to the conduct of the eight gentlemen in connection with the discharge of their duties as magistrates while administering the functions of the licensing law, it is necessary, in order that you may follow that which is said on the other side about this document, that I should state to you at the beginning some matters in connection with the law which they had to administer. As I dare say you know, there was a change made in the law in 1904. It will be necessary for me to refer to some of the sections in the Licensing Act of 1904; but, put in a very few words, the change made by the Legislature comes to this, that the licences may not be refused on certain grounds, except under compensation, and it is in reference to the conduct of these gentlemen, to their acts when dealing with the question of compensation as justices, that the words complained of were written, printed, and published by Sir Edward Russell. Now, when you are dealing with a place like Liverpool, which is a county borough, although in other parts of the country the duties under the Licensing Act, 1904, are administered by quarter sessions, by section 8, sub-section 2 of the

Licensing Act, 1904, the licensing authority consists of the whole body of justices acting in and for the county borough—that is, Liverpool. Therefore, you start with this, that the whole body that is to administer the provisions of the Act consists of the whole body of the Liverpool justices of the peace. They number about 152, and they are the licensing authority. Now, what they have to do, apparently, is this: They have to appoint a body out of their own number, which may be described as the Licensing Committee. They do that under the provisions of another section—section 5, sub-section 4. They start by appointing a Committee of their own number, the numbers of which are given under the section, to act as Licensing Committee, and that Licensing Committee acts in Liverpool as the renewal authority; that is, the authority before whom come the questions of the renewal of licences—the question whether they shall be renewed or not. They were appointed by the whole body of the justices under this Act in January, 1905. It was the first thing to do, and they did it. And the eight gentlemen who bring this complaint were amongst those who were appointed at that date as members of the Licensing Committee, or, as it is described in the Act, the Renewal Authority. Now, by the first section power to refuse renewal is vested in quarter sessions—that is, I have already explained to you, in Liverpool all the justices; but the power to refuse to renew is only to be exercised by the justices when there is a reference to them from those who act as the Renewal Authority or Licensing Committee, and is to be subject to compensation. The reference is to be made to all the justices. When that reference is made to them under section 1 the whole of the justices take into consideration whether they are to confirm or not the refusal to renew which the licensing authority has given. Then they are to assess compensation on certain principles which you need not be troubled with, and if, acting on those principles, the parties whose licences have been refused to be renewed, can agree with the quarter sessions, or the whole body of justices, or the licensing authority, if it could be agreed, well then there is an end of the matter; and if there is a disagreement the question of amount is referred to the authorities at Somerset House by section 2 of the Act. It follows from that that there must be found some mode of raising the money, and it is in connection more particularly with the powers and duties vested in those gentlemen and others—those gentlemen who are now making the complaint with reference to the raising of the fund that this question is concerned. By section 3 the quarter sessions, in Liverpool the whole body of the justices, shall in each year impose in respect of all existing "on" licences renewed in respect of premises within their area charges at rates not exceeding certain rates shown in the schedule to the Act. Therefore, under that, the duty of the whole body of the justices is to make a levy which will be sufficient for the purpose which they have in view, but a levy which is not to exceed as a maximum the rate specified in the

schedule. That is the power vested in the whole body of the justices; but there is a provision in the Act, section 5, sub-section 2, by which the whole body of justices or quarter sessions can delegate their powers, or any of their powers, under the Act. They have power, therefore, to delegate the duty of making a levy. As I shall show you in a moment or two, they delegated that power, amongst others, to the Licensing Committee, or the Renewal Authority, at a date which I shall bring before you in its order. Therefore, that same Committee appointed, and consisting in part of these eight gentlemen, had to entertain, amongst their other duties, the duty of raising a levy, and became, so to speak, for that purpose the delegates of quarter sessions. There are certain rules, which, perhaps, at present I need not trouble you with, made by the Secretary of State, which define what "compensation authority" means and what "renewal authority" means, and define the meetings which have to be held by the whole body of the justices in respect of these matters. If anything turns on those it will be convenient perhaps at a later stage to call your attention to them then. Now, on the 6th of January in this year, the whole body of justices met, and they met for the purpose of settling the number of the Licensing Committee, which, of course, had to come into existence under the Act. They met on the 6th of January, and they settled then that the Licensing Committee should consist of sixteen gentlemen, eight of them the gentlemen bringing this information, or at any rate concerned in the complaint. They decided that seven of those should form a quorum. On the 19th January a formal meeting was held, by which that Committee was appointed by the whole body of the justices, consisting of sixteen gentlemen, including the eight now concerned; and the instruction to those sixteen was that they should meet and, amongst other things, consider the extent of the powers which should be delegated to them by the whole body of justices. That was the instruction given to them—to consider and prepare a report. Now, I want to put to you these facts as they occur in their order. I don't think you can appreciate the question unless it is followed up to the date of the publication of this alleged libel on the 13th July, and I want you to remember as far as you can all that took place. That Committee held various meetings, and there is a minute I must call your attention to on the 24th January, 1905. There is, your lordship, an epitome of the proceedings of these committees which I should like your lordship to have. On the 24th January, 1905, on page 5, you will see (reading): "Reporting licences to committee to consider what action should be taken at the annual licensing meeting with a view to reporting licences for extinction subject to compensation. Resolved, that the special attention of the justices be this year directed to the beerhouse licences in the A and B police divisions of the city, where the premises are not used as restaurants, and that the Committee object to the renewal of such of these as can be opposed, with a view to make reports from all

to the justices." I want you, gentlemen of the jury, as far as you can to remember what I read in these documents—as far as you can. I know how difficult it is, because the terms of the libel complained of may have considerable reference, at all events subject to your guidance by his lordship—may have considerable light thrown upon it by the proceedings which took place in this Committee. So you see on January 24 the resolution was that those who were responsible for the resolution to renew licences had their attention directed, not to all licences, but to the beerhouse licences in the police divisions A and B. Then there was a meeting on January 31, 1905, and at that meeting the Committee, consisting of those eight gentlemen and the other gentlemen, whose names, perhaps, I had better give you. The names of the whole Committee are William Crosfield, J. A. Doughan, William Evans——

THE LICENSING COMMITTEE.

His LORDSHIP.—Is this the Licensing Committee?

Mr. TAYLOR.—Yes, my lord, the Licensing Committee of the justices.

His LORDSHIP.—Not quarter sessions?

Mr. TAYLOR.—Oh, no, the Licensing Committee, or, as it is now called, the Renewal Authority. The other names are F. W. Frodsham, C. H. Giles, John Henderson, Sir Thomas Hughes, C. W. Jones, Morris P. Jones, T. D. Laurence, Thomas Menlove, Isaac Morris, William Oulton, Sir Charles Petrie, R. I. Richardson, and Ephraim Walker. Now, I was dealing with January 31, and the first resolution about the beerhouse licences. On page 9, epitome 2, there is this passage:—"Report upon the delegation of powers and duties under the Licensing Act was discussed, and the following resolution was passed: That the consideration of the question of delegation to a committee of the powers and duties vested in the whole body of the justices be referred to the Licensing Committee to be appointed on January 19, powers and duties and rules. Read report of this Committee as settled by the chairman and deputy chairman, Sir Thomas Hughes and Mr. Isaac Morris. Resolved that the report be approved and submitted to the justices at the annual licensing meeting, and that in the meantime a print be sent to each of the justices." Therefore, you have a report settled by Sir Thomas Hughes and Mr. Isaac Morris, and the resolution, so far as the minute goes, appears to be without opposition—that the report is approved, and is to be submitted to the whole body of the justices, and a print sent to each. Now, it is important to call your attention to that report. It is dated the same date, and is headed "Private and confidential. Report Licensing Act, 1904. Report of the Licensing Committee on the question of delegation of powers and duties under the above Act, and as to other matters to be submitted to the justices at the

general annual meeting on February 7, 1905. At a meeting of the justices held January 6, 1905, the question of the delegation of powers and duties under the Licensing Act was discussed, and the following resolution was passed: "That the consideration of the question of delegation to a Committee of the powers and duties vested in the whole body of the justices be referred to the Licensing Committee to be appointed on January 19, with instructions to report to the justices thereon." The Licensing Committee was appointed, and held its first meeting on the 24th, and, after unanimously electing Sir Thomas Hughes chairman, they took the above resolution into consideration. There are then set out the powers and duties devolving upon the whole body of justices under the Act. "The power or duty (No. 4), the imposition of charges on licensed premises to form the compensation fund." That was one of the duties which the quarter sessions, or delegates of justices, have to do, and it was one of the duties which this Committee recommended should be delegated to themselves. At the foot of page 3 there is this recommendation:—"The Licensing Committee recommend the justices to delegate to a committee, composed of the same justices as form the Licensing Committee, the powers and duties numbered so-and-so." Amongst those powers is the power to raise the compensation fund. On page 3 there is a power under this Act of Parliament to borrow money. There is a recommendation about that which, perhaps, I had better read. With regard to No. 5 the Committee do not recommend the justices to act upon the borrowing powers. "The maximum sum which can be levied in Liverpool this year, based upon the estimate contained in the Parliamentary return, is £36,705, and whilst no determination has been come to by the Committee as to the amount of the levy to be made if the fixing of it is left to them, yet they believe that it would be highly undesirable to entertain the idea of exercising the borrowing powers contained in the Act." The important point there is, perhaps, that they set forth what the estimate in the Parliamentary return was—the sum of £36,000 odd which could be raised by the levy. Then there is the second paragraph on page 4—"With regard to the imposition of charges, the Committee desire to point out that in recommending the justices to delegate this power they do so with the view of enabling the Committee to form some estimate of the amount which will be required to be raised before the levy is made." So that it was to be delegated in order that they might be able to think about and consider how much they should raise. "If the delegation is made the procedure will be as follows:—The Licensing Committee will first report a number of licences for extinction. These reports will come before the justices, who will have power to reduce the number, but will be unable to increase it. The revised list of licences will then go back to the Committee, and ultimately it will be decided how much compensation will be payable in respect of each licence. It will then be necessary for the Committee to

impose a charge which will be sufficient to pay the necessary compensation and the expenses of the administration of the Act." I want to call your attention to that. This is the report of the Committee, assented to by the whole of the members who compose it, and indicates what the character or the amount of the charge, the power with respect to which they were asking to be delegated to them, should be—a charge which will be sufficient to pay the necessary compensation and the expenses of administering the Act, inasmuch as I shall show you later, when we come to deal with what is complained of in the article written, it is most important to see that in January, 1905, the whole of this Committee thought that the right amount to levy was "a charge sufficient to pay the necessary compensation," that is, in respect of the licences refused, "plus the expenses of the administration of the Act." The report further says:—"The Committee have considered what course they will adopt this year in exercising the power given them by the new Act as to reporting licences for extinction on payment of compensation, and have decided to select a number of beerhouse licences in the A and B police divisions of the city." That affirms what they had already said on the 27th January. "The following procedure will be adopted:—At the annual meeting the chairman will, on behalf of the Licensing Committee, object to the renewal of a number of such licences, and such objection will be followed by a written notice setting forth the grounds of objection. Each licence will then be considered by the Committee at the adjourned meeting, and after such consideration a number of licences will be reported to the whole of the justices, who will then hold their preliminary and principal meetings in accordance with the Home Secretary's rules. When the whole Bench have finally decided which licences are to be taken away, those cases will go back to the Committee, who will then hold a supplemental meeting for the purpose of allocating the compensation to be paid, and of deciding the details of each particular case." This is the report of the Licensing Committee of the Licensing Authority. That report is dated 31st of January, and it came before the justices on the 7th of February. No objection, so far as we know, was made either in the committee or before the whole body of the justices to anything in that report. It was approved by the whole body of the justices en bloc, so to speak. Every proposal in it was accepted, and it seems to follow from that that the question as to the amount of the levy, or at any rate the proposition as to the amount of the levy which would in the future have to be made, received the sanction of the whole body of the justices as a levy which was in its character to be sufficient to pay the necessary compensation and the expenses connected therewith. In approving that report the whole body of justices, of course, conferred upon this Licensing Committee or Renewal Authority another character, as well as the character which they then had. They remained, of course, the Licensing Committee and Renewal Authority, but they became,

when that was approved of, delegates in respect of the powers which they asked for of the whole body of justices, including, of course, the power to make a right and proper levy. On the very same day that the whole body of justices approved of that report—February 7—the same gentlemen, as a Renewal Authority, held the general annual licensing meeting. Originally the chairman—or, rather, through the chairman—a certain number of licences were objected to—what you might call Bench objections; and I think you may take it that the whole of the eighty-two licensees had notices of objection sent to them. The houses were all, with the exception of two, beerhouses in the A and B police divisions, carrying out the programme which the justices had set up for themselves. But there were included two fully-licensed premises—one in either the A or B division and the other in the C division. I believe that was done in order that they might gain some experience in dealing with fully licensed premises, because, as you will see, the whole of this matter was a new procedure, and a matter in which they had to accustom themselves and make, so to speak, experiments, so as to get familiar with the discharge of their duties under the Act. From the 7th February downwards until the 28th February, when there took place the adjourned general annual licensing meeting, extending over three days, these eighty-two objections were being dealt with in this way. A certain number of justices—perhaps all—inspected the premises. On various dates from that period various inspections were made, and conclusions were being arrived at by these gentlemen as to whether the whole of the eighty-two objections would be persisted in. Now, in the result, the justices abandoned thirty-five of the objections, and these thirty-five were renewed without objection. There remained forty-seven to be dealt with in court, and after hearing the evidence and adjudicating upon it, twenty-nine only were finally objected to and refused.

His LORDSHIP.—Twenty——

Mr. TAYLOR.—Twenty-nine, my lord; and included in the twenty-nine were the two fully licensed houses, and the rest were all beerhouses in the A and B divisions. If you have followed what I have stated from the Act of Parliament, that was by no means final, because, under the Act, the refusal to renew is subject to conditions. First, you must refer it to quarter sessions—that is, the whole body of justices of Liverpool; and, secondly, compensation must be paid. And, perhaps, it is important to remember this, that if compensation is not paid the licence is not taken away, because you refuse subject to compensation. It may be very important to remember this: that if you do not raise enough money to form a sufficient fund to pay compensation to all the houses objected to, why, then, the licences which ought to be extinguished survive—survive, of course, in favour of those who hold them. It is as well just to remember that. Now, as I have said, there were twenty-nine refusals, and the Renewal Authority had to report to quarter sessions at a meeting

on the 22nd March. The report was considered in draft on that date. Perhaps it would be better to read it:—"The Committee considered draft report which had been prepared by the clerk, and copy of which had been sent to the Committee, relating to the twenty-nine licensed premises which the Committee had decided to refer to the whole body of justices for extinction with compensation." You see, therefore, there had been a draft report prepared by their clerk as to these twenty-nine premises which had been considered, and it was decided that the draft report should be sent to the justices:—"Resolved, that the report be approved, and a print thereof be sent to each of the justices for consideration at the preliminary meeting to be held on the 29th March, inst." Then followed the report. Mr. Taylor here read the report, which said:—"At the adjourned general annual licensing meeting holden at Liverpool, the 28th February and 1st and 2nd March, 1905, for the above-named licensing district, we, being the Renewal Authority for said district, decided to refer to you, under section 1 of the Licensing Act, 1904, the question of the renewal of the licences held in respect of the premises specified below. As soon as possible after the appointment of the Licensing Committee, which acts in Liverpool as the Renewal Authority, the Committee took into consideration the question as to whether any licences should be reported this year for extinction with compensation. Owing to the lack of sufficient time to consider this question as it affects the whole city, the Committee decided to confine their attention at the licensing meeting to the ante-1869 beerhouses in the A and B police divisions of the city, excluding licences which might be specially brought to the notice of the Committee. The reasons which weighed with the Committee in selecting these beerhouse licences as a commencement of their work under the Act were (1) their structural unsuitability for their trade; (2) the undesirable position in which most of such houses are situated, rendering police supervision difficult; (3) that the A and B police divisions are more than sufficiently supplied with public-houses for the wants of the people; and (4) that in the general interests of the public the renewal of the licences was not desirable. The Committee accordingly at the annual licensing meeting objected to the renewal of eighty-two licences, and between that meeting and the adjourned meeting inspected the premises. As a result of the inspections and inquiries it was found possible to intimate to the parties interested that in thirty-five cases the licences would be renewed, and in this way the unnecessary expense of an inquiry in court was saved. In the remaining forty-seven cases a notice of objection was served, and evidence was heard at the adjourned meeting, with the result that the Committee decided to report the twenty-nine cases, particulars of which appear below. An arrangement was come to in court with Messrs. Peter Walker and Son, Limited, who owned fifteen out of the eighty-two cases, whereby they agreed to waive all claim to compensation which they may have as owners in the licences 3, 6,

11, and 21 in the above list, provided they are allowed to enlarge the premises in five cases, the licences for which were renewed. Plans showing these proposals will come before the justices in due course. In the case numbered 16 on the list, being 23, Duckinfield Street, the owners, Messrs. Threlfall's Brewery Company, Limited, agreed to forego any claim to compensation to which they or their manager might be entitled to. The compensation provisions of the Act being at present in an experimental stage, it is impossible for the Committee to give any reliable estimate as to what it will cost to extinguish the twenty-nine licences referred to in this inquiry. Having regard to the small takings in the case of some of the fully-licensed premises and the very little compensation that will be asked for in five of the beerhouse licences, it is probable that the average cost per house will not exceed £500." That makes a total cost of £14,500, which would be the sum, plus expenses, in their judgment, to be raised to pay off the extinguished licences. That was the maximum amount to be placed at the disposal of the compensation authority. If that was received, the Committee recommend the whole body of justices, at their preliminary meeting, to confirm in its entirety the action of the Committee. It is dated the 22nd of March, and I believe it came before a preliminary meeting of the justices on the 29th March, and was adopted in full. Now, I want to stop there for a moment, as there appears to have been no objection raised by the Committee. There is no record of a division; there is no record of any minority vote, or that any minority vote was recorded; and, as far as can be traced, the report was received by the whole body of justices with absolute unanimity, or, at any rate, so far as we know, nobody made any active opposition. And, as far as I understand, very little fault at all—no fault, in fact, was found either with the report that I have just read on the 31st January, or with the report now read on the 22nd March. Therefore, you may take it, I think, that that report shows on March 29th the mind of the whole of the justices in dealing with the question of compensation, and how much they all deemed and felt fairly ought to be raised, so as to put it in language describing its character, to provide the amount necessary to pay the compensation money plus expenses, and that they should proceed, as this report says, carefully to estimate the total sum to be raised. Of course, it was only an estimate of what they thought necessary on all the grounds set out here, because the takings were small—in certain cases £500 for each house, or a total of £14,500—so as to run as near as possible to the maximum amount. That was about £36,000. Therefore, if it turned out at £14,500 it would be less than half. That came before the full bench of the justices, and was approved. It came before them again on April 18th—that being the principal meeting under the rules of the Secretary of State—and was confirmed. Being confirmed, of course, if you follow the procedure, the matters in connection with those twenty-nine houses had to go back to the same body to adjust the amount

of compensation to be paid in the twenty-nine cases, and, if possible, to agree to the amount. It came before them on May 30 and 31 and June 1.

His LORDSHIP.—They were acting as delegates of quarter sessions?

Mr. TAYLOR.—Yes. And they took the cases in two branches, so to speak. They first settled in open court those who were entitled, and then settled in private how much they were entitled to. And in the result they were enabled to arrive at agreement in certain cases. The total amount claimed for the twenty-nine houses came to £26,449 0s. 6d. They were, as I have stated, able to agree in eighteen out of the twenty-nine cases with those making the claims. The amount claimed in respect of those eighteen was £12,548, and they settled them for £7,855. Now, gentlemen, that disposes of the eighteen. One of them seems to have dropped out, because no claim was made for it at all, and it disappeared, and there was paid nothing. There were then left ten, which made the balance up to twenty-nine—they could not agree in the ten—I suppose they thought the claims were too big—and those ten had to be referred, in accordance with the Act of Parliament, to the authorities at Somerset House. The claim in respect of ten was £13,541, and, in addition to that fact, of the amount claimed, to which they could not agree in the ten cases, the gentlemen who were dealing with it—the Committee—had before them the assessment relating to all these houses and the takings per week. I should just like to give you the figures with regard to the eighteen and the ten. With respect to the eighteen houses, the assessment was £600, and the takings £150 a week. Therefore, with the eighteen houses assessed at £600 and the takings £150 a week, altogether they settled at £7,855. They had that element also present in the ten cases. The assessment in the ten cases was £378, and the takings £117 a week. Well, gentlemen, they could not agree, and the matter had to go to Somerset House. It may be convenient, or perhaps better still, at a later stage, to state that Somerset House decided what that amount of £13,541 ought really to be. Now then, gentlemen, they got the total claims, they got the agreed amount at this committee, they got the assessments and the takings, and then they had to meet to decide how much was to be raised. On the 4th July they fixed a date and sent out a notice for the meeting to decide the levy, and that day was fixed as the 12th July, 1905, on which these gentlemen, as delegates of the whole body of justices, met to settle how much. Gentlemen, it is in respect of their conduct on that date, which, of course, had to be based upon all that had gone before, that the comments are made by the defendant in this case, which, to the minds of these eight gentlemen, were comments of a very serious nature indeed. They met on the 12th, and it will be proper to read to you what took place on the

12th, according to the minutes relating to that meeting. There were present Sir Thomas Hughes (chairman), Isaac Morris (deputy-chairman), Mr. Doughan, Mr. Frodsham, Mr. Giles, Mr. Henderson, Mr. Charles W. Jones, Mr. Thomas P. Jones, Mr. T. D. Laurence, Mr. T. Menlove, Mr. William Oulton, Sir Charles Petrie, and Dr. Richardson. Of course, this was not a public meeting. It was a private meeting. "Compensation Fund: Levy for 1905. It was moved by the deputy-chairman, seconded by Sir Charles Petrie:—That the scale of charges to be levied for the compensation fund for the year 1905 be one-half of the maximum shown in schedule 1 of the Licensing Act, 1904." That resolution was to raise practically £18,500. You see what they had before them. They had those materials which I have mentioned, the sum agreed with the assessments and takings; they had the sum with respect to the ten, and they had to form a judgment as to how it was necessary to raise it. These two gentlemen moved that it be half the maximum—that is, £18,500. They had the reports in which they concurred that about £500 a house would be enough—the total about £14,500. They thought, according to the best of their judgment, that one-half of the maximum rate would be sufficient in order to pay off the extinguished licences. There was an amendment, moved by Mr. John Henderson, seconded by Mr. Doughan, "that the maximum charges should be, under schedule 1 of the Licensing Act, 1904, levied for the compensation fund of the Licensing Act, 1904." The division: Four for the amendment, eight against. Those gentlemen thought £36,000 ought to be raised to pay off this sum. The eight gentlemen who are here to-day voted against that. They thought it was too much, for reasons which satisfied them. Another amendment was moved by Mr. Charles W. Jones, seconded by the chairman, that three-fifths of the maximum should be levied for the compensation fund. Division: For it 5, against 8. That amendment having been negatived, the original motion was put and was carried that the scale of charges be one-half of the maximum.

SOMERSET HOUSE AWARD.

That is the resolution which was carried—the exact figure is £18,518 3s. 4d. The amount awarded in the ten cases by Somerset House is £6,212. Added to the £7,855 that makes £14,067, subject to this—that there is notice of appeal from that decision in two out of the ten cases only. The expenses will not exceed the sum at the outside of £300, so that you have a total sum which, if you could have got into the minds of the Somerset House authorities and prophesied about it, has turned out at £14,367, which covers the whole thing. To use the words of the report, "the sum necessary to pay the extinction money, plus expenses, is £14,367, and the sum raised, £18,500, shows a surplus to go into next year of £4,100." As far as events go, that looked as if half the amount, having regard to the experimental nature of this

measure and the avoidance of risk, was amply sufficient. Now, what is the matter of which we complain? I ask your careful attention to this, which appeared in the "Liverpool Daily Post and Mercury" on July 13 of this year——

His LORDSHIP suggested that copies of the article in question should be handed to the jury.

Mr. TAYLOR.—They are very difficult to get.

Mr. RUFUS ISAACS.—I am glad to know there is such a demand for our paper.

Mr. TAYLOR.—I mean the prints. There never was any difficulty in getting the "Daily Post and Mercury."

Mr. ISAACS.—I am delighted to hear it.

At length four prints were procured and handed to the jury.

Mr. TAYLOR.—I am now going to read it to you, gentlemen:—"In the course of the debate on the third reading of the Licensing Act, the Prime Minister said, 'I am perfectly convinced that when the Bill is working, and when it is seen that by this Bill, and by this Bill alone, you can without gross injustice and discontent really diminish the number of licences in this country, all parties, forgetting the differences which have unhappily divided us for the last three months, will admit that this is the greatest contribution ever made to the cause of temperance reform.' Brave words these! Now, let us see how this greatest contribution ever made to the cause of temperance reform is operating in Liverpool to diminish the number of licences. Yesterday there was a meeting of the Licensing Committee to fix the rate of the levy on licensed houses to form the compensation fund." That is perfectly accurate; that is what they were met for—to fix the levy. "Four members of the committee, Messrs. Charles Jones, Henderson, T. D. Laurence, and Doughan, were in favour of fixing the rate at the maximum allowed by the Act. Sir Thomas Hughes, probably feeling that it would be impossible to persuade the Committee to impose the maximum, suggested three-fifths. Even this modest compromise was rejected, and the Committee decided, by the votes of Sir Charles Petrie and Messrs. I. Morris, Oulton, Frodsham, Giles, Menlove, M. P. Jones, and Richardson, to fix the rate at one-half the maximum. These gentlemen will hardly pretend that they were influenced in the course they took by a desire to diminish the number of licences in the city." What does that mean? As it turns out, the course they took is amply sufficient to pay compensation in respect of the twenty-nine houses which had been proposed by everybody so far back as March in this year. "The sum which it will be possible to raise in the current year at the fixed rate will amount to about £17,500." That is not accurate. True, it says "about." In point of fact it is £18,500—£1,000 too little. If you are going to make comments on what people do, and what they ought to do about

raising the proper amounts, and accuse them of a breach of duty, you may as well be accurate while you are about it. "Now, apart from expenses of administration, which will be considerable, the very modest programme which the Bench have decided on for the present year must involve an expenditure considerably in excess of the total that can be raised by yesterday's decision." That is not right. It must not, and did not, involve anything in excess of the total that could be raised; it involved an expenditure substantially less. "The Bench have not ventured to propose the extinction of a single full licence." That is not true; there are two. "But they have picked out a few of the '69 beerhouses in the A and B divisions for abolition under the Act." They were picked out by the whole body of justices. "Compensation for a few of those, amounting in all to £8,000, has been fixed by mutual agreement, and the rest have been referred, as provided by the Act, to the arbitration of the Inland Revenue authority. The amount in these cases is not likely to be less than £13,000." The total claim was only £13,541, and one would have thought it was likely to be very much less. Then the article goes on—"The matter, therefore, stands thus: For the extinction of the selected licences, licences which the Bench have decided ought to be extinguished forthwith in the interests of the community, a sum of not less than £21,000 is required, and now the Licensing Committee decline to levy a larger sum than £17,500." Now, I want before I read the rest to stop here. It is not too much to say that the whole of that is inaccurate and misleading, and to the mind of a man reading it it is calculated to convey the idea that these eight gentlemen deliberately voted and carried a vote for a sum which could not be sufficient for the purpose of extinguishing the licences. And that, therefore, these licences which they said ought to be extinguished—some of them would survive in the interests of the licence-holders, because there was not sufficient money voted to extinguish them. Now, what was their duty—to use the words of the article—in the interests of the community? To raise such a sum as would be sufficient to extinguish the licences which, according to the whole bench, ought to be extinguished. If you accept the statement of the article, what did they do? They "declined to levy a larger sum than £17,500," when "£21,000 was required." They knew they had fixed £8,000 under the agreement, they knew the balance would not be less than £13,000, and the total not less than £21,000; and yet they deliberately voted a less sum. Their duty, as magistrates carrying out the obligations bestowed upon them, was to see that they raised sufficient money. If they did not, the very object of the Act was frustrated, because everyone thought the licences should be extinguished; and yet they were kept alive because of the gross breach of duty on the part of these eight gentlemen, who did not do that which was right. What other inference can anyone draw? Only this: that these

eight gentlemen, not as a question of policy, not as a question of differing views of what is right or wrong, what is advantageous or disadvantageous—that they voted against the proper sum, and voted for an insufficient sum. There can only be one interpretation. By this deliberate vote, in breach of their duty, they are blocking and stopping the machinery of the Act, their duty being to carry it out loyally and properly, having regard to the confidence bestowed on them by the whole Bench of magistrates and to their duty in relation to the best interests of the city. "The effect of the Committee's decision will be to make the rate of reduction actually less than it was under the old order of things, a result which, no doubt, was shrewdly foreseen. We congratulate the 'trade'—(that means the brewing interest)—upon the ability and courage of their friends—we had almost said their representatives—on the Licensing Committee." Could these gentlemen, when that was written and published of them by Sir Edward Russell in his journal, sit down under that? What does it mean? It means this, and I suggest you are the judges of what it means, I submit to any fair-minded man reading that it can mean but one thing: You eight gentlemen were there to carry out your duties properly, not to have regard to this trade or that trade, but to do your duty as magistrates. Confidence has been placed in you by those who appointed you. You knew your duties, which were to carry out, by making a proper levy, the machinery of this Licensing Act. What did you do, and why did you do it? You were there as friends and representatives of the trade. What does that mean? Being there as friends and representatives of the trade, what did you do? Instead of voting a sum sufficient to extinguish the licences or all of them of your friends, knowing better, knowing that the amount which was required was £21,000, and not £17,500, you deliberately, in breach of trust, neglected your duty, and neglected your duty for your friends. With what object? With the object that some of the licences might live another year. Now, the figures on which these comments are based are all inaccurate, some a little inaccurate, some more. But every inaccuracy of figure and every statement which is inaccurate is against, and not in favour of, these eight gentlemen. What could they do? They could not remain quiet. When magistrates are charged, as they have been in this article, if our submission is right—when magistrates are charged publicly in such language as this in the Press with having violated their duty by deliberately raising too little in order to block the working of this Act, which it was their duty to carry out, they must do something. They want no damages; they ask for no damages; they bring no action for damages. There is, however, reserved to them a procedure as persons having an official or a judicial position, and that is the procedure now before you. They adopt that procedure, and ask for your verdict. There is no justification whatever in the allegation made. This libel is a libel upon these gentlemen in

their position as magistrates. The Press is a great engine of power. If properly used, the Press can effect great things for the poor or the weak, and it can drag down people from very much higher positions than those of justices of the peace. The Press is an enormous power, and especially is it a power to be respected when employed in a great paper conducted by an eminent man. Then it is still more powerful, and, therefore, when such things as this article appear it is the more obvious that those whose character for proper conduct in their office is attacked must have their character redeemed before a jury of their fellow-citizens. Gentlemen of the jury, that is the position. As has already appeared from the statement of Mr. Isaacs, there is a plea of not guilty. There is also a plea of justification, and that the article does not mean that which I have submitted to you it does mean. It may turn out that there is only one question in the case, and that is the true meaning of the article, for I hold that the alleged justification is no justification at all of what we complain. If it is said this article is a criticism of the policy of these eight men, the answer to it is, "If you were criticising our policy or criticising our views we should never have made any complaint at all." It is because this article, in their judgment, and, as we put it, in the opinion of all reasonable men, means a charge of corrupt conduct against these eight men, a charge of doing that which they did as friends of the brewing trade, it is necessary for them to have this matter cleared up. Well, these eight gentlemen come before you and are about to place these facts before you, and to ask for a verdict in their favour in respect of this criminal libel.

THE EVIDENCE.

The first witness called was

FRED. GERARD JONES, clerk in the employ of Messrs. Payne, Frodsham, and Bewley, solicitors, who, in reply to Mr. W. H. S. Oulton, said that on July 17 he was instructed by Mr. Frodsham to purchase a copy of the "Liverpool Daily Post and Mercury."

Did you purchase it?—I went to the "Post" office in Victoria Street, and I was told there that they hadn't a surplus copy, and they referred me to their office in Wood Street. I there obtained the copy referred to. Its date was July 13, and the copy contained the article part of which is now complained of.

EVIDENCE OF THE JUSTICES' CLERK.

EDGAR CHRISTIAN SANDERS was next examined by Mr. F. E. Smith. He said he was clerk to the Liverpool justices, to which position he was appointed on the 15th August, 1902. The Licensing Committee was appointed under the last Act, on the 19th January, 1905. There were no nominations other than the sixteen

names of the Committee who were ultimately appointed. On the 24th January of the present year a meeting of the Licensing Committee was held.

And a resolution was adopted?—A great number of resolutions were adopted.

Well, the resolution which I want is that which deals with the beerhouses licences to be specially dealt with in two police divisions.—Yes.

His LORDSHIP (reading the resolution).—"The Committee consider that action should be taken at the annual licensing sessions with the view of reporting licences for extinction, subject to compensation, and that special attention of the justices be this year directed to the beerhouse licences in the A and B police divisions of the city, where the premises are not used as restaurants, and that the Committee object to the renewal of such of these as may be decided, with the view of making a report thereafter to the justices." Is that it?—Yes, my lord.

Mr. SMITH.—That was passed unanimously?—There was no division on it.

On the 31st January was there still another meeting?—Yes, and at that meeting the report was agreed upon on the delegation of duties, and a resolution was passed that the report be approved by the Committee and by them submitted to the whole body of justices. It was submitted to the whole Bench of justices on February 7.

Was there any dissentient recommendation at either the meeting of the Committee or at the meeting of the whole body of justices on February 7?—Not on February 7th, but there had been at the meeting before. At the first meeting on the 24th January the Committee considered the resolution which had been passed by the whole bench of justices on the 6th January. The Committee resolved unanimously to recommend the justices to retain the powers Nos. 1, 2, 5, 7, 10, and 12 of the Licensing Act, and to delegate to another committee composed of the same justices who form the Licensing Committee powers Nos. 3, 6, 7, 8, and 11; and it was further resolved by a majority "that it be a recommendation to the justices that the imposition of charges on licensed premises to form the compensation fund, No. 4, be delegated to a committee."

With that exception there was no dissentient motion?—No, sir.

By his LORDSHIP.—The effect of the resolution passed by a majority was that the Licensing Committee should act practically as a committee of quarter sessions as to the delegation of powers.

Mr. SMITH.—On the 7th February was there a meeting of the Committee in pursuance of the delegation, at which eighty-two houses were objected to?—On the 7th February was held the annual

licensing meeting. There was a meeting of the whole Bench, and the whole body approved of this report, which was submitted by the Licensing Committee.

Mr. SMITH.—Was it decided at that meeting that eighty-two beerhouse licences should be objected to?

His LORDSHIP.—You had better read the important parts of the report of the Licensing Committee. (To the witness:) This report came before the whole body of the justices on February 7, and they adopted it. Was there any division?

Witness.—No.

Mr. SMITH said the report set forth a list of the principal powers and duties devolved upon the justices by the Act.

His LORDSHIP.—It is a resumé of the Act to some extent.

Mr. SMITH.—Yes. The fourth of these powers is the imposition of charges on licensed premises—to form the compensation fund. With regard to the fifth—borrowing money for the purposes of compensation—"the Committee do not recommend the justices to act upon the borrowing powers. The maximum sum which could be levied in Liverpool this year, based upon the estimate contained in a Parliamentary return, is £36,705, and while no determination has been come to by the Committee as to the amount of the levy to be made if the fixing of it is left to them, yet they believe that it would be highly undesirable to entertain the idea of exercising the borrowing powers contained in the Act." With regard to the imposition of charges, "the Committee desire to point out that in recommending the justices to delegate this power, they do so with a view to enabling the Committee to form some estimate of the amount which will require to be raised before the levy is made. If the delegation is made, the procedure will be as follows:—The Licensing Committee will first report a number of licences for extinction. Those reports will come before the justices, who will have power to reduce the number, but will be unable to increase it. The revised list of licences will then go back to the Committee, and ultimately it will be decided how much compensation will be payable in respect of each licence. It will then be necessary for the Committee to impose a charge which will be sufficient to pay the necessary compensation and the expenses of the administration of the Act." A later passage of the report reads:—"The Committee have considered what course they will adopt this year in exercising the power given them by the new Act as to reporting licences for extinction on payment of compensation, and have decided to select a number of beerhouse licences in the A and B police divisions of the city. The following procedure will be adopted:—At the annual meeting the chairman will, on behalf of the Licensing Committee, object to the renewal of a number of such licences, and such objection will be followed by a written notice setting forth the grounds of objection. Each licence will then be

considered by the Committee at the adjourned meeting, and after such consideration a number of licences will be reported to the whole of the justices, who will then hold their preliminary and principal meetings, in accordance with the Home Secretary's rules. When the whole body have finally decided which licences are to be taken away, these cases will come back to the Committee, who will then hold supplemental meetings for the purpose of allocating the compensation to be paid, and of deciding the details of each particular case."

THE BENCH AND THE OBJECTIONS.

Mr. SMITH.—Now you can tell me, Mr. Sanders, from February 7 to February 28 these objections were under the consideration of the Bench; I don't mean at formal meetings; but they were making inquiries, visiting, &c.?—The Committee were visiting premises and making inquiries.

His LORDSHIP.—But, first of all, the objections—when were they made?

Witness.—On the afternoon of February 7.

His LORDSHIP.—Then the Licensing Committee met to consider what houses they should object to?—Yes, my lord.

What did they do?—The chairman, on behalf of the Committee, objected to four full licences and seventy-eight beerhouse licences.

Mr. SMITH.—The chairman is Sir Thomas Hughes.

His LORDSHIP.—He objected with the approval of the Committee?—On behalf of the Committee.

His LORDSHIP.—The Committee resolved to make the objections, and the chairman thereupon made them?—Yes. I should like to say that the meetings of the Committee lasted until the next day. Certain objections were made on the 8th, but that was the effect of the whole meeting.

His LORDSHIP.—On February 8 what happened?—The Committee held a number of meetings at which all these eighty-two licensed premises were inspected.

Mr. SMITH.—And after each inspection did they arrive at a resolution?—I should like to say what procedure was followed. At the end of each inspection the Committee held a meeting in their room, and decided as to which of the houses they had inspected that afternoon objection should be proceeded with, and which licences they thought, after inspection, might be renewed, notwithstanding the notice of objection having been given.

Mr. SMITH.—That notice of objection was given to every beerhouse in the division?—As a matter of fact, on the first day they had not been given, but it was decided that, notwithstanding

the formal notice of objection, I was to write to certain houses and say that the Inspection Committee would not persevere with their objection, but would formally renew the licence until the adjourned day.

His LORDSHIP.—So that, when the Committee, after inspection, held a meeting and decided which objections should be proceeded with, and which abandoned, you wrote to the tenant or licence-holder to say if it would be abandoned or not.

Witness.—That is so.

His LORDSHIP.—That is to save expense?—Yes; that was the object.

Did you only write to those where you abandoned?—Yes. You see the procedure set out in epitome No. 7. The same procedure was followed on each occasion of a visit.

Mr. SMITH.—And at every one of those meetings there are epitomes dealing with them?—Yes.

His LORDSHIP.—No. 7 is an illustration of the procedure?—Yes.

Mr. SMITH.—What was the result in the aggregate of the Committee's decisions by February 28, when the meeting took place?—At that date the Committee decided to proceed with forty-seven objections.

Mr. SMITH.—Involving the abandonment?

Witness.—Of thirty-five.

His LORDSHIP.—Of those forty-seven, how many were full licences?—Four were "full" and forty-three beerhouse licences.

Mr. SMITH.—I think in the three days between 28th February and March 2 the detailed hearing took place of the residue of the cases?—That is so.

His LORDSHIP.—When an objection is made to a licence it has to be heard by the Licensing Committee, I take it?—Yes.

His LORDSHIP (to the jury).—The parties have to be heard by the Licensing Committee, and then it has to be decided whether the objection shall be allowed or whether the licence shall be renewed. That is a proceeding where evidence is taken.

Mr. SANDERS.—And the result is explained in epitomes 11, 12, and 13.

Mr. SMITH.—Of the forty-seven heard, I think twenty-nine were refused renewal?—That is so. I should like to be accurate; they were not refused renewal, but they were referred to the compensation authority, and the renewal was provisionally made pending settlement of the compensation amount.

Mr. SMITH.—And of those twenty-nine cases, two, I think, were fully-licensed houses?—Yes.

Then on March 22 there was a report presented by the Committee to the whole Bench?—No, it was submitted to the Licensing Committee.

The JUDGE.—And the report was considered?

Witness.—Yes, and a draft report was sent to every member of the Committee.

Mr. SMITH.—You drafted the report?—Yes. And it was resolved that the report be approved.

Mr. SMITH proceeded to read extracts from the report as follows:—"The Committee took into consideration the question as to whether any licences should be reported this year for extinction with compensation. Owing to the lack of sufficient time to consider the question as it affects the whole city, the Committee decided to confine their attention to the ante-1869 beerhouses in A and B police divisions and others specially brought under the notice of the Committee." Among the reasons given were that "A and B divisions were more than supplied, and that in the general interests of the public the renewal was not desirable. The Committee accordingly objected to the renewal of eighty-two licences, and they subsequently inspected the premises. As a result of that inspection and inquiry, it was found possible to intimate to the parties interested in thirty-nine cases that the licences would be renewed, the unnecessary expense of an inquiry in court being thus saved. In the remaining cases notice of objection was served, and the Committee decided to report twenty-nine cases. The compensation provisions of the Act being in an experimental stage, it is impossible to give any reliable estimate of cost in extinguishing twenty-nine licences, but, having regard to the small takings in most of the cases, and that the two fully-licensed premises were kept open at a loss, and that very little compensation was asked for in the case of five beerhouses, probably the average cost will not exceed £500. If this estimate should prove correct, it will be seen that the Committee have been anxious this year to proceed carefully, in order to gain their experience without risking any possibility of exceeding or coming near to the maximum amount at the disposal of the authority."

COMMITTEE'S PROCEDURE.

Witness said the report was submitted to the whole Bench sitting as a preliminary meeting under the Licensing Act on March 29th.

Had the report been previously circulated in print among the members of the Bench?—Yes.

Witness, referring to the minutes, added that at the preliminary meeting it was moved by the chairman (Sir Thomas Hughes), seconded by Mr. Isaac Morris (one of the plaintiffs in the action), and resolved unanimously that the report be confirmed.

Was there any dissent?—No, it was resolved unanimously.

On the 18th April was there another meeting of the justices?—Yes; that was the principal meeting under the Licensing Act?

His LORDSHIP.—Under the Licensing Act, 1904?—Yes.

Witness went on to explain that it was necessary to give any person interested in the twenty-nine licences proposed to be extinguished an opportunity of appearing before the whole Bench of Justices to show cause why the extinguishing of all or any of the licences should not be proceeded with.

His LORDSHIP.—That took place on April 18th?—Yes.

Witness read a minute showing that the persons interested in the licensed premises reported by the Licensing Committee, as the licensing authority under the provisions of the Licensing Act, 1904, appeared, and it was decided to refuse all the twenty-nine licences, subject to the payment of compensation, except one licence of Messrs. Walker and one of Messrs. Threlfall.

Mr. SMITH.—On the 30th May, 31st May, and 1st June was an assembly of these various claimants before the Committee to deal with their claims and see if an agreement was possible?—That was so. It was called in the Licensing Act "the first supplemental meeting."

His LORDSHIP.—That is the Licensing Committee exercising delegation powers?—Yes.

Mr. SMITH.—Will you tell first in the aggregate of those twenty-nine houses what was the total amount claimed?—Was it £26,449?—Yes.

And I think there was a settlement in respect of eighteen of those twenty-nine?—Yes.

And in the eighteen £12,548 was the amount claimed?—Yes.

The amount paid was £7,855?—That is so.

After Messrs. Threlfall's claim was withdrawn there were left ten cases to be dealt with otherwise than by agreement?—Yes. The claim in respect to the ten was £13,730.

In regard to the assessment undertakings as to the eighteen, I think the assessment was £600, and the takings £150 a week?—I have not got those figures.

Mr. SMITH.—Well, I will have them properly proved.

MR. ISAACS OBJECTS.

Mr. ISAACS (interrupting).—If these figures appear from any document that Mr. Sanders has compiled I will accept the evidence from him, but I understand that he has not done it, and does not know about it, and there is only the statement of my friend, which I cannot accept.

His LORDSHIP.—I understand we will find them all in this schedule of the report, and it is a mere question of arithmetic.

The Witness.—That is so.

Mr. ISAACS.—I don't want to make a technical objection. There seems, however, to be a difference in the figure. That given by my friend Mr. Taylor was £13,541 in respect of the claim for ten houses, whilst the witness has just said £13,730. We have had so many microscopical matters of difference that I would only like to know where we are.

His LORDSHIP.—You can get it from one of your other witnesses, Mr. Smith.

THE LICENSING COMMITTEE'S MINUTES.

Mr. SANDERS then read the minutes of the meeting of July 12, at which Sir Thomas Hughes presided, and there were present Mr. Isaac Morris (deputy-chairman), Mr. Doughan, Mr. Frodsham, Mr. Giles, Mr. Henderson, Mr. Charles W. Jones, Mr. Morris P. Jones, Mr. Laurence, Mr. Menlove, Sir Charles Petrie, and Dr. Richardson. It was moved by the deputy-chairman, seconded by Sir Charles Petrie—"That the scale of charges to be levied for the compensation fund for the year 1905 be one-half the maximum charges shown in schedule 1 of the Licensing Act, 1904." It was moved as an amendment by Mr. John Henderson, seconded by Mr. Doughan—"That the maximum charges be levied." Division: For the amendment, 4; against, 8. A further amendment by Mr. Charles W. Jones, seconded by the chairman (Sir Thomas Hughes)—"That three-fifths of the maximum charge be levied"—was negatived by eight votes to five. The original motion was then carried, that one-half the maximum charges should be levied.

His LORDSHIP.—These eight are the eight gentlemen mentioned in the indictment?

Witness.—That is so.

Mr. SMITH.—Returning to the ten houses in respect of which no agreement was arrived at, these in due course were referred to Somerset House?—Yes. I received the awards made by Somerset House on November 2. The total claim of the ten houses was £13,730, and the total of the awards was £6,212.

His LORDSHIP.—There is an appeal pending in two of the cases?—Yes. In one of these, 18 and 20, Kempston Street, the amount claimed was £1,195 5s. 7d., and the amount awarded by Somerset House was £445.

His LORDSHIP.—They knocked off £750?—Yes. In the second case, 46, Berwick Street, the claim was £1,375 9s., and the amount awarded was £506.

His LORDSHIP said that struck off £869.

THE AMOUNTS PAID.

Mr. SMITH.—Allowing for these amounts, and allowing for the amounts that were arrived at as the result of agreement, what has been the total amount paid in this first year's working of the Act?

His LORDSHIP.—Nothing is paid yet.

The Witness.—It was paid yesterday, my lord. Including the two cases under the appeal, the total amount awarded is £14,067, and the expenses are estimated at £300, or a total of £14,367.

His LORDSHIP.—If the appeals were allowed in full you would have to add £1,619?—Yes.

Mr. SMITH.—What was the amount raised by the levy of one-half?—We have not actually got it. What we have got is the sum of £16,000, which has been paid on account.

His LORDSHIP.—You get it from the Government authorities?—From the Inland Revenue officials.

Mr. SMITH.—You have made a calculation?—We ought to get £18,518. I think the Inland Revenue officials have actually received £18,156 10s. The remaining amount has been paid into a suspense account because the parties are appealing against the assessment.

Mr. ISAACS.—Who says that?—The Inland Revenue authorities.

Mr. SMITH.—Assuming you get the full amount of £18,518, will you tell me the surplus you have first on the assumption that the appeals are disallowed by the High Court?—It will come to £4,460 about. I beg your pardon, I did not take the expenses into account.

His LORDSHIP.—If the appeals are disallowed the surplus will be £4,160; if allowed in full, £1,619 less?—That is so.

CROSS-EXAMINATION.

Witness was then cross-examined by Mr. Rufus Isaacs.

How long have you been clerk to the licensing authority?—Three and a quarter years.

Before that you occupied some responsibility in reference to licensing?—I was assistant prosecuting solicitor for the Corporation of Liverpool, and as such conducted the prosecutions in licensing for three years.

And you objected to renewals?—Certainly.

You can tell us something about the position of licensing in the city of Liverpool. What I want to know first from you is, has there been for some time a strong movement on the part of, at any

rate, some in Liverpool to reduce the number of licences in Liverpool?—The number of licences has been steadily reduced for many years.

I wish you would answer the question?—I am trying to, but it is impossible to——

What I was putting to you was, has there been a strong movement on the part of some in Liverpool to reduce the number of licences—a strong movement which has existed for some time?

His LORDSHIP.—You mean a strong movement by the justices?

Mr. RUFUS ISAACS.—Yes, my lord.

Mr. SANDERS.—Until 1900 the justices only did what they were bound to do by law and settle upon the police objections.

His LORDSHIP.—I think that is a fair answer.

Mr. RUFUS ISAACS.—So far from objecting to it, I welcome it.

DEMOLITION AREA.

Mr. SANDERS.—In 1900 they began what was called "a demolition area," and the reason for that was that the Housing Committee of the Corporation had in certain areas of the town swept away large areas of insanitary property. In those quarters the population was enormously reduced. In 1900 the justices took two of such areas and gave notices of objections to all the licencees in those two areas in order that they might see whether the licences were required, having regard to the changed circumstances of the population. The result was that they inquired into each of the cases.

Mr. RUFUS ISAACS.—I should suggest that the time has come when I might be allowed to get an answer to my question.

His LORDSHIP.—I fancy the question is: What is a strong movement?

Mr. RUFUS ISAACS.—What the witness is giving is something totally——

His LORDSHIP.—He is stating what they did. You asked whether it was a strong movement.

Mr. RUFUS ISAACS.—That is a question which may be answered "Yes" or "No." I do not mind if it is a question of two or three sentences, but I really do not want to be kept for a long time listening to something which I have not asked about, and which may become material later on.

His LORDSHIP.—Very well; let him answer "Yes" or "No."

Mr. RUFUS ISAACS (to witness).—Leave out the justices altogether from your consideration for the moment; do not take any notice of the justices, but just answer the question I am going to

put to you. Was there, apart from the justices altogether, within the city of Liverpool during the few years preceding the new Act of 1904 a powerful movement in favour of the reduction of licences within the city of Liverpool?

Witness.—I have heard of such a movement, but the action was actually done by the Bench.

Mr. ISAACS.—You meant that whatever the movement was, it could only become effective by the result upon the Bench?

Witness.—That is not quite the position. It is this——

His LORDSHIP (interposing).—You must answer Mr. Isaacs's question, you know (laughter).

Witness.—Mr. Isaacs's question assumes that some persons caused the justices to take a certain course. That is not so; the justices took it themselves.

JUDGE AND COUNSEL.

Mr. ISAACS.—To make it plain——

His LORDSHIP (interposing).—You are suggesting that the witness is not making it plain. You must be fair.

Mr. ISAACS.—I strongly protest against your lordship saying that.

His LORDSHIP.—I have said it.

Mr. ISAACS.—It is in the power of the witness to make it plain.

His LORDSHIP.—He tells us he is anxious to answer, to put it in another way.

Mr. ISAACS.—If your lordship had waited a moment you would have seen what I was asking. You cannot judge of a question until you have heard the whole.

His LORDSHIP.—Go on.

Mr. ISAACS (to witness).—Are you anxious to make it plain, Mr. Sanders?

Witness.—Yes. I answered at greater length in order to do so.

Mr. ISAACS.—Now, Mr. Sanders, you see what I am putting is something independent of the justices, in so far as it is a movement outside the justices. You understand?—I understand.

And what I was suggesting to you, and I think there can be no doubt about it, is that there was a strong movement within the city of Liverpool to get the number of the licences reduced. Was there such a strong movement or was there not?

Witness.—There was a strong movement, but it was the Bench that originated the movement in 1902.

At this stage, Mr. Isaacs paused to reply to a remark which Mr. Taylor had addressed to him in an undertone.

His LORDSHIP.—If you have any objection make it to me.

Mr. ISAACS, having indicated that the conversation of counsel did not need to trouble his lordship, proceeded with his cross-examination.

THE VIGILANCE COMMITTEE.

Now, Mr. Sanders, was there not, before 1900, a Vigilance Committee formed?—I believe so.

That committee did not consist of the justices?—I don't know what it consisted of. I have never been informed, and I have never inquired. I believe that, as a matter of fact, some justices were upon the Vigilance Committee.

The Vigilance Committee, then, did not consist of justices, but it may have included justices?—I will take it that it was so. I don't know.

Did you know that the Vigilance Committee served notices of objection as well as the police?—The only notices of objection which were served by private citizens during the last fifteen years were with respect to eleven licences in 1903.

Sir Thomas Hughes has taken a very prominent part in this question, has he not?—Yes; he has been chairman of the licensing justices for the last fifteen years.

And I need hardly ask you this; has he not been very much respected?—Very highly respected.

During 1904, can you give me the number of licences that were refused?

His LORDSHIP.—You mean refused renewal?

Witness.—There were actually sixty-six fewer licences on the register at the end of the year than at the commencement; but these sixty-six were not all refused renewal; there was no application as to sixteen.

Mr. ISAACS.—Had they had notice of objection?—No.

You mean the sixteen lapsed?—Yes.

That left fifty?—Yes.

Now, in 1903?—The number was eighty-one. In forty-seven of those there was no application.

Just follow me. There was a good deal of agitation before the passing of the new Act of 1904 on account of the reduction of the licences which the justices were making throughout the country?—Yes.

I am summarising the situation. The agitation in substance was that it was said that the magistrates ought not to reduce licences without compensation to the licence-holders?—Yes, that was so. It was said by the licence-holders and by politicians——

Mr. ISAACS.—Yes, quite so (laughter).

And eventually the measure which we know as the Licensing Act of 1904 was introduced by what I suppose I may call the late Government.

Yes, by the late Government and the present Home Secretary (laughter).

But the late Government?—Oh, yes (renewed laughter).

The policy, shortly speaking, of the Act was that compensation should be given upon certain terms calculated upon certain bases in respect of the houses of which the licences were reduced without complaint of misconduct?—Yes.

It was only desired to reduce licences because it was thought they were unnecessary for the district, and not from complaints or defects in structure, and the compensation should be granted on the terms stated in the Act?—Yes; on the value of the licence.

A BROAD VIEW.

Mr. ISAACS.—I don't want to get into a technical discussion, but all I want is a broad view of the matter. In determining how much compensation was going to be levied that fact would determine the number of licences that can be reduced within that year?—Yes, provided you knew how much you were going to pay.

Mr. ISAACS.—Of course. You must arrive at some estimate, and human estimates at least sometimes turn out incorrect. But you do your best according to your knowledge and experience. What I mean is that, supposing for example you have got a sum of £37,000 levied for compensation to be paid in this area, you can apply either that sum or a portion of that sum to reducing the number of licences during that year?—That is so.

The portion of the sum which is left over and has not been dealt with, has not been paid, or is not payable during this year, would be carried over, and form part of the compensation fund for the ensuing year or years?—Yes.

And also there is provision, isn't there, for borrowing powers to the authority in respect of the compensation fund which may be levied under the Act?—Yes.

The effect of that would be that the licensing authority would have the power—I won't say more—to levy the full amount, which in this case I will take to be, according to the estimate you have given us, £37,000, and, besides that, of course, they

would have the power, if they thought right to exercise it, of borrowing money upon the security of the compensation fund, which they can levy in succeeding years?—Yes, subject to the consent of the Home Secretary.

POLITICS AND THE COMMITTEE.

Mr. ISAACS.—I quite agree. Now in point of fact, this Committee was divided into something like ten to six, counting political parties, wasn't it.?—I have nothing to do with politics; I don't know the politics of each gentleman.

I have no doubt you don't know officially, Mr. Sanders (laughter).

His LORDSHIP.—Tell us what you believe.

The Witness.—Well, I believe that six of them are members of the Reform Club. I will put it that way.

Mr. ISAACS.—I think that will tell us what the complexion of the six is (laughter).

That is, of course, of the sixteen of the Licensing Committee which was the committee raising this levy; and with reference to the ten—I am not asking you officially—the ten were really Conservatives or Unionists?—I believe ten to be members of the Constitutional Club (laughter).

That gives us the remainder (laughter), and of that ten, Sir Thomas Hughes was one?—Yes.

Broadly speaking, his view has been opposed to the other nine?

Mr. TAYLOR (interposing).—One minute. I do not object to my friend's asking the political proportion of the Committee, but——

His LORDSHIP.—I don't think you can object to this question. I don't know that you could not have objected to the other, but I don't think you can object to a question about the action of Sir Thomas Hughes in licensing matters. It is very difficult to draw the line as to what is and what is not admissible. I propose to be rather liberal, because I think it will take less time. Of course there is a limit.

Mr. TAYLOR.—Let me take a general objection.

His LORDSHIP.—I think you had better wait until a specific question arises. You may put your question, Mr. Isaacs.

Mr. ISAACS.—That your lordship's mind may not be made up, I should like to remind your lordship that I have not had an opportunity of putting my case. At the proper time I will submit that it is practically impossible for me to help going into the question.

His LORDSHIP.—Some of it you can present in evidence.

Mr. ISAACS.—No doubt; and certainly, as far as I am concerned, I shall do my best to keep outside the political element.

His LORDSHIP.—This question as to the action of Sir Thomas Hughes in licensing matters is quite admissible.

Mr. ISAACS (to Mr. Sanders).—Broadly speaking, when there has been a question raised in committee, Sir Thomas Hughes's vote, though a Conservative, has gone with the six Liberals, and against the other nine?—I would not like to say so. Broadly speaking Sir Thomas Hughes's chief ambition appears to have been to have the Committee unanimous throughout.

That shows what a wise man he was. But he could not always succeed. When I spoke of what his attitude was on the division, I was speaking of the time when the Committee was not unanimous and I am only asking with reference to that?—On several occasions, undoubtedly, Sir Thomas Hughes has voted with the minority.

Let me put it to you in a form which will admit of no doubt—that Sir Thomas Hughes, broadly speaking, has been a strong reformer with the other six?—Do you mean this year?

No, not particularly?—I would not like to couple Sir Thomas Hughes with the other six particularly, but he has been a strong reformer in licensing matters for the past fifteen years.

Mr. ISAACS.—I will accept that.

His LORDSHIP.—There are reforms and reforms.

Mr. ISAACS.—Certainly.

The court then adjourned for luncheon.

"THE OVAL TABLE."

Mr. RUFUS ISAACS.—You have heard that there were sixteen members of this Committee?—Yes.

Usually did they sit at the Committee, the nine members of the Constitutional Club, when they were there, on the one side, and the six members of the Reform Club, when they were there, on the other side?—Practically yes. It is an oval table, and sometimes there were as many as would go all the way round the table.

Mr. RUFUS ISAACS.—I mean those of one view sat together.—Yes?

And then on the cross bench sat Sir Thomas Hughes?—Yes; he sat in the middle of the table (laughter).

Can you tell me, at the time that it was resolved that the Committee should consist of the sixteen, had there been a proposal by Sir Thomas Hughes that the Committee should consist of fourteen and himself, making fifteen in all?—He had proposed that the Committee should be fifteen.

To that I think an amendment was proposed by Mr. Thomas Royden, and seconded by Mr. Isaac Morris, that there should be sixteen?—Yes.

Mr. Royden and Mr. Morris were two out of the nine?—No; Mr. Royden has never been, he was not a member of the Committee.

But he is a leading member of the political party to which the other nine belong?—I believe he is.

ANOTHER "DAILY POST" ARTICLE.

Can you tell me, did you see an article that appeared in the "Post" of the 5th December, 1904, just before the Act came into force?—Yes.

This was an article which was written in the paper of the fifth of December, 1904, and deals with the Licensing Act of 1904, which was to come into operation upon the 1st of January, 1905:—"Ere long an important matter will have to be undertaken by important men. It will be good for the city if they will take time by the forelock and decide how they will proceed. On the 1st of January the new Licensing Act will come into operation. Under that Act licensing will be left to a special committee of magistrates. That committee has to be constituted. The city justices have to choose its members from among themselves. They have to determine how large the committee shall be. We believe we anticipate the judgment of the public and of the city Bench when we say that the committee should be reasonably small."

Mr. RUFUS ISAACS (to Mr. Sanders).—How many are there on the Bench?—151.

Had there been at that time two additions made to the Bench of magistrates in 1903 and 1904, which had added forty-one to the number?—I will take it that your number is right. I am not quite sure of the number. At the time you speak of the Bench consisted of 152. It is about 150 now.

Mr. RUFUS ISAACS (continuing to read the article):—"The execution of the Act will come under their hands as a business of principle, of social policy, of administration, with an obligation to consider public interests while dealing with many private interests. Their office will be one of delicacy, one of detail. For such work to be carried on by too large a body would predjudice its thoroughness, would diminish its responsibility, would bring into frequent question its good faith. This would be calamitous. Although upon a rough, general view the Act may be held to have endowed every licensee with a freehold of his licence, it will be found, as soon as it begins to be acted on, there will be special circumstances in each case which will be liable to influence the discretion of the licensing authority, especially in the matter of reducing the number of licences, which will continue under the new, as under the present law,

to be in Liverpool an affair of much social import. If the licensing prerogative be distributed among a large number of justices the result is surely likely to be much 'lobbying'; much ear-wigging; some party voting; a good deal of whipping-up at sittings at which important divisions will have to be taken; many chance absences or attendances by which ill-advised, or not deliberate, conclusions may be arrived at, disturbing the general good policy or establishing unfortunate precedents. At the outset some heat will exist. If the magistrates are not careful more will be generated. Nothing could be more harmful than to begin this difficult business, and (as would then be inevitable) to carry in on in an atmosphere of intrigue and rancour. Assuming, as we may, that the force of these reflections will be appreciated, and that by general consent of the magistrates it will be settled that the Licensing Committee should be small—say, for the sake of argument, a committee of twelve—how are we to guard against even this committee being nominated in a spirit of partisanship? We are not speaking exactly of political partisanship, to which, in justice to the city magistrates, they have for years been consistently superior. We are speaking, rather, of a more indefinite, but quite actual partisanship for and against liquor interests. There is a 'cakes and ale' tone of mind, and there is a Malvolio tone of mind; and, correspondingly, there are distinct sections of opinion and preference as to licensing; while between these extremes there is a much larger body of personnel and conviction, in favour of reasonable and responsible action; neither teetotal on the one side nor pro-liquor on the other. This considerable body of magistrates, latently approved by a proportionately considerable body of the public—this rational and salutary persuasion of moderate but righteous judgment as to what ought to be done for the best in the circumstances—ought at this moment quietly, but firmly, to take possession of the helm, and, if it does, will safely guide the magisteral ship so as to avail itself of whatever fair wind there is and to avoid the rocks. One side, we may suppose, is well pleased with the new Act. The other side jealously resents the reduction by the Act of magisterial power. Between the two opposing sections is the much more numerous proportion of the community and Bench alike who think that the Act should be made the best of. To them we appeal, and our proposal is that the magistrates should at once appoint a small committee of selection to choose the, say, twelve members of the licensing authority. Whether formally or unofficially would not matter, because the recommendations of such a committee would be adopted when the Bench at large came to make the statutory appointment of the Licensing Committee. Suppose, for instance, that Mr. Royden and Mr. Isaac Morris were to be put on the Selection Committee, along with Mr. John Henderson and Mr. William Evans, with Sir Thomas Hughes to hold the scales; not a person in Liverpool would doubt that these gentlemen would choose a positively unexceptionable Licensing Committee, certain to do absolute justice alike to the great public

interest and the substantial private interests concerned. If by the beginning of the new year the Licensing Committee—that is to say, the statutory licensing authority—were found practically nominated and ready to take their places and do their work, all the good that could be got out of the Act would be secured, as well as peace, and what is so desirable for the public weal, absolute confidence in the rectitude and bona-fides of the administrators of supreme legal powers. Already there are things in the air which incontrovertibly suggest the necessity which we strongly urge should be met, and met without delay. To say nothing of the most unhappy and injurious contingency of a hot and hasty magistrates' meeting electing by a majority a Licensing Committee of one extreme colour or the other—an event which would render the new Act a more real evil than it need be, whichever side were to win—there is a question, for instance, of the borrowing powers which the Act gives to the Bench with a view to accelerating as may be desired the extinction of licences. We will not discuss any probable or possible action of Liverpool in this connection, except to say that we understand the levy under the Act will suffice to enable the magistrates to proceed with the reduction of the number of licences on much the same scale as in recent years, in which they have vastly improved the character of Liverpool and earned warm public approbation. What we do wish to speak of is the possibility that the use or non-use of the borrowing powers might become at the very outset a question affecting the choice of the licensing magistrates. Such an exigency would bring out hostility, and possibly acrimony, before any experience had been gained or trial made of the normal powers of the Bench under the Act. Surely an impartial but viligant licensing body should be first secured, as it quite easily may, by our plan of a small Selection Committee; and then the needs of the case will be gradually and practically exploited in actual administration. A parallel case may be brought to mind. The whole history of Liverpool primary education was turned into a right channel in 1870, when, on the passing of the Forster Education Act, a great contest was expected, and would have taken place but for Mr. Bushell's bold suggestion that the first school board should be elected by equitable arrangement between the parties. It behoves the city magistrates to imitate, with a difference, the great Bushell precedent. They know quite well the best men. Let them trust a small Committee of Selection to nominate them."

POLITICAL COMPLEXION OF THE LICENSING COMMITTEE.

Mr. RUFUS ISAACS.—Was it at first proposed, when the proposals came before the Licensing Committee, that the members should consist of seven of one party and seven of the other, with Sir Thomas Hughes as chairman—which would make fifteen?—I never heard such a suggestion.

All that you know, I presume, Mr. Sanders, is that the proposal was brought forward which we have already referred to, that the number should be fifteen?—That was brought forward at the meeting.

You do not know, I suppose, of any previous discussions or proposals that have been made between the justices outside? All you knew was what took place at the meeting?—Certainly. Conversation had taken place with me, but I did not know that anything had been done.

His LORDSHIP.—There was nothing done inside the meeting?—No.

Mr. ISAACS.—Dealing with the 152 justices who comprise the body first of all, I suppose I may eliminate four as neutral; may I not?—If you mention the four, possibly I may agree with you.

Mr. ISAACS.—I do not want to if I can help it.

His LORDSHIP.—Must we go into politics in each of these 152.

Mr. ISAACS.—Not if I can get what I want from the witness. I do not want to mention the names if it is not necessary. (To witness) Am I right in saying that the majority of the 152 justices belonged to the one party?—I cannot answer that at all. I do not know the politics of one-third of the magistrates.

You really cannot tell me?—No. I saw a list in the "Daily Post" last December. I read it with great interest, but I have never taken any notice of it since.

Very well, I will get it from another witness.

The amendment that the number be sixteen was carried?—Yes, it was carried by 38 votes to 16. There must have been a number there who did not vote, because there were seventy-eight present altogether.

At the time of the division?—At the meeting. There seems to have been considerably more present than those who voted, because there was a subsequent vote, when sixty-two voted.

There is nothing in your notes to show there was the number beyond the 54 that you mentioned?—Except that on a subsequent motion 62 voted upon it, so that they must have been there at this time.

But 62 is not 78?—I agree.

There was a discussion as to the number of houses which it was proposed to report for extinction, and there were many divisions, were there not?—Yes; there were a number of divisions.

And substantially the divisions were conducted—we will leave Sir Thomas Hughes out—on party lines, were they not?—I dare say substantially, but I have no record. The divisions took place in the Magistrates' Room after the hearing of evidence in court.

AN EXPRESSION BY SIR THOMAS HUGHES.

And at one of these meetings that a question was raised about one house, did not Sir Thomas Hughes make this observation, tell me if you remember it, did not Sir Thomas Hughes make this observation, after a house had been passed:—"If you pass that you will pass anything"?—I don't remember that expression ever being used in the Magistrates' Room. Such an expression, I believe, was used, at one of the visits, in the street. That is my recollection.

And that was in reference to the view of the majority that this particular house ought not to be reported for extinction?—I presume so.

Sir Thomas Hughes's view apparently being that it was beyond question a house to be reported for extinction?—It bears that construction, certainly.

When the draft report was made, which has been read to-day, on March 22, and which was subsequently passed, when that report was sent, as we have learned it was to the Licensing Justices, you know, don't you, that the Licensing Justices have no power to increase the number of houses that are to be reduced, but only the power to reduce?—Yes, certainly, our report of January 31 says that.

So that when this draft report came before the whole body, even if they thought that a greater number of houses ought to be scheduled for extinction, they had no power to revise the report for that purpose?—Certainly not.

They could only say that out of the twenty-nine reported for extinction there were some that ought not to be extinguished.

His LORDSHIP.—Are you speaking of the committee of Quarter Sessions?

Witness.—As a matter of fact, there were no sittings as a committee at that time; they were the whole Bench.

His LORDSHIP.—The difficulty is that inasmuch as the magistrates here are the same as the whole body of Quarter Sessions, whereas in nine cases out of ten the Quarter Sessions are a much larger body.

Mr. ISAACS.—Liverpool is a county borough, and comes under the Act as you have described it.

Witness.—There was considerable discussion as to the number of the Licensing Committee, which was fixed at sixteen. Of the forty-seven houses proposed to be extinguished only twenty-nine were subsequently reported.

His LORDSHIP.—That would be in court after evidence. You say forty-seven houses first came before the court, and there was a difference of opinion?—Yes.

After hearing the evidence?—Yes.

Mr. ISAACS.—I suppose that what happened was that the majority carried the twenty-nine?—That was the result.

And therefore those twenty-nine came to be embodied in the report?—Yes.

And once embodied in the report the number could not be altered by increasing it?—No; the number could not be increased.

Mr. ISAACS.—I am now coming to the report of the 12th July meeting. There were thirteen gentlemen present out of the sixteen?—That is right.

And the thirteen included the eight gentlemen who are prosecuting this case?—Yes.

And that would leave—I think I am right in saying so—four of what I must call the other political complexion—four Liberals and Sir Thomas Hughes?—Yes.

That was the construction of the committee on that day?—It was the members present at that meeting.

SCALE OF COMPENSATION.

It was proposed by the deputy-chairman (Mr. Isaac Morris), seconded by Sir Charles Petrie, that the scale of compensation money to be levied should be one-half?—Yes.

Then an amendment was moved by Mr. John Henderson, seconded by Mr. J. A. Doughan. All the four Liberals were present, were they not?—Yes.

What they proposed was that the maximum charges authorised under schedule I of the Act should be levied for the compensation fund. Was that the difference between them? Was that the difference of policy—the policy of what I may call one party being to levy half, the policy of the other party being to levy the maximum that the Act enabled them to levy?—That was what they wished to do.

The result, of course, was that there was a division, and four voted for the amendment to levy the maximum. I presume they were the four Liberals?—I presume so.

And the other eight gentlemen were the eight prosecutors in this case?—Yes.

Sir Thomas Hughes did not vote?—I gather that.

Then a further amendment was moved by Mr. Charles W. Jones, seconded by Sir Thomas Hughes, that three-fifths, apparently a compromise, should be levied. There was another division, five voting for the amendment and eight against it?—Yes.

And I think, to get it clear, Mr. Charles William Jones was a Liberal?—I believe so. I didn't know at the time.

One of the four we have referred to. And the seconder of that was Sir Thomas Hughes?—Yes.

Then three-fifths of the maximum was to be levied for the compensation fund every year. That was voted upon. There was a division, and five voted for and eight against it. That would be the four Liberals and Sir Thomas Hughes, and the eight gentlemen who voted against are the prosecutors. Is that the position?—Yes.

His LORDSHIP.—What would be the difference between the three-fifths and one-half. What would it work out at?

The Witness.—Three-fifths would produce approximately £21,500, and a half approximately £18,000.

Mr. ISAACS.—Did Sir Thomas Hughes say that in his view the amount required would be £21,000 for the purpose of carrying out the recommendation of the majority to reduce the twenty-nine?—When?

I don't care particularly. I will take it as you like. At this meeting?—Well, my lord, if I am to answer correctly what happened, perhaps I had better read a note I made after the meeting.

His LORDSHIP.—No; Mr. Taylor may ask you that. At present I think you must answer Mr. Isaac's question. I think it is a reasonable one.

Mr. ISAACS.—Let me put it to you in another way. I want to avoid going into it at greater length.

His LORDSHIP.—Still, it is a simple question.

THE THREE-FIFTHS SUGGESTION.

Mr. ISAACS.—Quite so. Let me put it in a simple form—that what Sir Thomas Hughes said was that three-fifths of the maximum which they could levy under the Act would be required—he said that if they levied three-fifths of the maximum charge that would be sufficient to cover all contingencies which in his opinion ought to be levied?—Yes.

Replying to the Judge, witness said that Sir Thomas Hughes's point was that three-fifths of the maximum levy would bring in a sum just sufficient to pay for the amount which was required, assuming the commissioners gave what they had been asked.

His LORDSHIP.—I want you to read exactly your note on this point.

The Witness (reading).—"The chairman stated that, as there seemed to be a disposition on the part of the members of the Committee not to levy more than was actually necessary, he would for the sake of compromise, and in order to arrive at a decision which would be acceptable to the whole Committee, agree to a levy of three-

fifths of the maximum scale, which would bring in a sum just sufficient to pay for the amount which was required, assuming the commissioners gave what had been asked."

His LORDSHIP.—What had been asked—£13,700?

Mr. ISAACS.—It would come to about that.

The Witness.—That took place not at the commencement of the meeting.

Mr. ISAACS.—I understand from your note that he put that forward as a compromise?—Yes.

At this time had the £7,855 in respect of the eighteen houses—in reference to which the agreement was arrived at as to the amount—had that been arrived at?—Yes.

His LORDSHIP.—That had been arrived at as far back as the 2nd June?—Yes.

Mr. ISAACS.—And that would leave, taking the figures you have given, £13,730, which was the claim put forward for the ten houses, the one house having been dropped out?—Yes.

And in that way it would make just about £21,700 required, for which three-fifths would be necessary?—Yes.

At the time these proceedings were instituted—I mean the criminal proceedings which are now for trial—it was not known what the Inland Revenue's decision would be as to the amount which they would award in respect of the claim for the ten houses for which £13,730 was claimed?—No, we did not get that until considerably later.

If I understand correctly, the meeting was on the 12th July. The article complained of appeared on the 13th July, and the proceedings, as we know from the documents, were instituted on the 18th July. You may take that 18th from me?—Yes.

And the Inland Revenue authorities gave their decision, I think, on the 2nd November?—Yes.

RE-EXAMINATION.

Mr. TAYLOR (re-examining).—Have you verified those figures yet which you were asked about?—I haven't yet had an opportunity.

Mr. ISAACS.—I will take them at any time.

Mr. TAYLOR.—Did you tell my friend Mr. Isaacs that these magistrates sat at a round table?—An oval table (laughter).

And that Sir Thomas Hughes held the scales?—He sat in the middle of the longitudinal section.

I don't know. How did these gentlemen come to inspect the premises?—Generally in three or four cabs as the number required (laughter).

My friend talks about parties. I don't know whether any one party managed to get into a cab or not?—I don't know. I was only in one myself.

I suppose they scrambled into these cabs?—No, I think it was carried out with a great degree of decorum (laughter).

Did Sir Thomas travel alone in a barouche?—No. Sometimes he travelled with me. But we did not preserve any order in going into the cabs.

Then, may I hope that there was some relief from the monotony?—I did not find it monotonous. I don't know whether other people did.

How many houses would they visit?—Eighty-two altogether, and the chairman and vice-chairman visited seventeen more.

Was the whole body of this Committee present at each house? No. You will find some members did not attend some meetings.

I suppose there is a good deal of chance about it. Some members might be there and some not?—Some members are always present. I believe one of the members was never present.

Who was the member who was never present?—I think it was Mr. Morris P. Jones. I don't remember him being present on any occasion.

Mr. ISAACS.—May we know to which party he belonged? I believe he is one of the prosecutors?—Yes.

He was never present?—Never at the inspection. He was present at the meetings.

Mr. TAYLOR.—I suppose Sir Thomas Hughes was present at the inspections?—At every one, I think, except two or three.

After the inspection the whole number of the party, I suppose, drove back again to the magistrates' headquarters in Dale Street?—Yes.

They went straight back into the room and adjudicated upon the matter?—We had to hear evidence in court first. We decided what cases might be deleted.

VISITS OF INSPECTION.

What was the object of the visiting—for mere observation?

His LORDSHIP.—No, because you did decide some before any evidence at all?

Witness.—Yes.

Mr. TAYLOR.—I thought that in that sense, before hearing evidence, from what they had seen the decision was arrived at—at any rate, in the thirty-five cases—to give notice that there would be no cause for attendance?—Yes.

I suppose that that was done in the same way by sitting at the round table, and arriving at that conclusion?—Yes.

When do you say from your recollection of the meeting, the decision to fix the number of houses was finally arrived at—I mean the number of objections?—Do you mean the twenty-nine?

Mr. TAYLOR.—Yes.

His LORDSHIP.—He has told us. They heard evidence on the 13th May and 2nd June.

The Witness.—No, my lord, it was a previous meeting, at the conclusion of the annual licensing meeting.

Mr. TAYLOR.—I mean the Committee, you know?—It was the meeting in February—on February 28th, 1st and 2nd March.

His LORDSHIP.—That was to hear evidence and decide?—Yes, my lord.

Mr. TAYLOR.—And, if I follow it rightly, before that resolution was passed which in effect approved the report on the part of the Licensing Committee, every member of it had had a draft?—That was so.

Then, as we know, from the resolution, the report was sent to every member of the whole body?—Yes.

What I want to ask you is this. Up to that date, 22nd March, had there been any definite ascertaining of the amount to be levied?—No, certainly not.

His LORDSHIP.—No discussion as to the amount?—There was a discussion, but no decision.

Mr. TAYLOR.—I would like to get from you when there was a discussion. I observe a reference to it in the report of the 31st January. Perhaps it was before that?—No, it was after that.

Perhaps you can give it me, can you? Was it before the inspection?—Yes. (Reading) "Before the inspection for which the Committee was called took place a discussion arose as to the procedure to be adopted in dealing with licensed premises which it was contemplated might be reported on the ground that the licence was not required, and as to the steps it was necessary to take with regard to putting in force the compensation provision of the Licensing Act, 1904. No resolution was passed, but it was agreed to continue on the lines already determined upon."

And those lines were?—They were set out in the report of the 31st January.

That is to continue the inspections and decide on the number of objections?—It was to continue the inspection and consider which houses, if any, could be deleted, and then adjourn to hear evidence. In the result no question was entertained as to the amount of compensation until the meeting of the 12th July.

At that meeting something was said about the amount of levy, and Sir Thomas Hughes ruled it out of order?—Sir Thomas Hughes said that it had been decided by the whole Bench that the matter delegated to the Committee was to decide as to the number of houses to be taken away. He said they were merely a Committee for visiting purposes.

The amount of compensation was to depend on the number of houses, and not the number of houses on the amount of compensation?—We had stated in the report of the 31st January that the Licensing Committee desired to form an estimate as to how much they would require before making a levy. They could not do that before the adjourned licensing meeting.

EXTINGUISHED LICENCES.

You were asked about certain figures of two years—about the number of licences reduced in 1904 and 1903. Now, 1903 in some way accounts for two years?—Yes; there was no licensing meeting in that year, owing to the operation of the Licensing Act of that year..

You gave the figure that thirty-four were reduced in 1903?

Mr. ISAACS.—My impression was that he said eighty-two or eighty-one.

His LORDSHIP.—In forty-one cases there were no applications, and thirty-four were refused.

Mr. TAYLOR.—"Lapsed" is the term applied when a licence goes out of existence.

Mr. SANDERS.—I used the term "lapsed" when the justices did not actually refuse a licence. There was some arrangement with brewers with regard to eleven houses out of the eighty-one.

Beyond the thirty-four?—The eleven are included in the forty-seven, I think.

However, the total number was eighty-one, which means the number by which the licensed houses were reduced?—Yes.

That refers to reduction from every cause, and refers to the two years 1903 and 1902—it covers the whole period?—Yes.

In 1904 you say the reduction was sixty-six?—Yes.

Can you give us the figures for a longer period than that. There are figures given in the Magistrates' Year Book. What do they include?—That return includes licences going out of existence from all causes.

On the basis of sixty-six and eighty-one, I see that from the year 1890 to 1904 there were 484 licences which, to use the term, "lapsed"?—I think the figure will be right; I have not gone into it.

Can you give the figures for 1905 on the same basis?—Assuming that the two cases in respect of which appeals are pending are gone, the number will be forty-eight—that is the number of licences which disappear.

This concluded Mr. Sanders's evidence.

Mr. SANDERS.—I should like to say that I was subpœnaed to appear by both sides in this action. May I say——

His LORDSHIP.—No, no; that does not matter now (laughter).

Mr. ISAACS.—You are here, Mr. Sanders, and that is enough.

Mr. SANDERS.—I am an official.

Mr. TAYLOR.—One minute, Mr. Sanders. Have you got any note about the meeting when the claims of the ten houses which subsequently went to Somerset House were discussed—any note with respect to Sir Thomas Hughes and the claims?—No.

What took place—was it in court or in a room?—In the Magistrates' Room. The first part was in open court, when it was decided who were the proper claimants, and then we considered in private the amount submitted by the parties.

Did Sir Thomas Hughes characterise the claims at all?—My impression is that the whole Committee thought that in many cases the claims were excessive.

His LORDSHIP.—In one of these reports you mention an estimate—an average—of £500 each house. Do you recollect whether there was any difference of opinion as to that?—Certain people thought it was too small.

His LORDSHIP.—It turned out to be just right.

Mr. SANDERS.—It turned out to be a little above.

Mr. TAYLOR at this stage put in the order authorising the action, made by the Divisional Court. He also intimated that, with regard to the position of Sir Edward Russell as editor, he was prepared to call evidence, but Mr. Rufus Isaacs did not consider the proof necessary.

MR. ISAAC MORRIS IN THE WITNESS-BOX.

Mr. ISAAC MORRIS was then called and examined by Mr. Taylor.

You are a justice of the peace, and deputy-chairman of the Licensing Committee?—Yes.

How long have you been a justice of the peace?—Fifteen years.

And how long have you been a member of a Licensing Committee?—Since 1892.

On the 6th of January there was the first meeting of the magistrates to determine the numbers of the renewal authority—that is to say, the Licensing Committee?—Yes.

I believe it is quite accurate to say that at first fifteen was proposed as the number, and afterwards sixteen was the number agreed upon?—I have listened very carefully to Mr. Sanders's statement, and I acquiesce in everything he has said.

My friend Mr. Isaacs said that something was said about the numbers 7 and 7. Do you remember anything of that?—Not in the magistrates' room.

There had been, I gather from an article read, some discussion about this Committee in the public papers?—Yes.

And I daresay there may have been a good deal of discussion otherwise?—Yes.

But, limiting my question for the moment to the magistrates' room, you say there was no question of the numbers 7 and 7 before the justices there?—No.

Was there a large meeting on the 6th of January?—Yes.

The Committee of sixteen met on the 19th January for the first time?—Yes.

In order to report as to these powers?—Yes.

And that report was agreed to, as we know, on the 31st of January?—It was.

And apparently agreed to without dissent?—Yes.

I am speaking in respect of members of the Committee?—Yes.

I presume, under the presidency of Sir Thomas Hughes, that there was ample opportunity for any man to express his opinions?—Oh, undoubtedly.

I observe in that report that there is a passage which relates to the amount of the levy. That is on page three, where it mentions a sum of about £36,000. You have got that before you?—Yes.

I gather from that that the question of borrowing powers had been discussed at the Committee?—Yes, but it was brushed on one side at once.

Then I see on the next page reference is made to the levy, and they ask for the power about the imposition of charges to be delegated in order that the Committee might be enabled to form an estimate of the amount required?—Yes.

Then I see they say it will be necessary for the Committee to impose a charge which will be sufficient to pay the necessary compensation and the expenses of the administration of the Act. I dare say you recollect very well this report in draft coming before that Committee?—Very well.

That was agreed to by all?—Quite unanimous.

I see it was decided to select beerhouses from two divisions, and treat the matter as an experimental matter, and to keep the necessary compensation as light as possible?—Yes.

That was approved on the 7th of February, and then the renewal authority began to act and deal with those houses?—Yes.

You, I think, were present fairly well at almost every meeting?—I fancy I attended every meeting.

Did you sit at an oval table?—Yes (laughter).

And, I suppose, Sir Thomas Hughes was there, as much there as you were?—He was always there.

Have you any recollection of the phrase he is said to have used—something to the effect that "if you pass that you will pass anything"—in connection with some of the houses?—I do recollect something about that, but I am rather of opinion that it did not take place deliberately at the table.

But outside somewhere?—Yes. Sir Thomas Hughes is here, and he will tell you the expression made use of.

At one of the inspections, perhaps, was it?—Yes.

I suppose the Committee that went round to inspect varied in its composition?—Yes, it was not always the same.

And in some instances you and Sir Thomas Hughes inspected alone?—Yes. It was before we arrived at the eighty-two. We went round a few days before to relieve the work of the Committee.

You and Sir Thomas Hughes were entrusted by the Committee to inspect and report?—Yes, and to reduce the numbers if we possibly could. That was before the eighty-two were fixed upon.

Then it would be before the meeting of the 7th February?—I think so; it was very early in our work.

Did you attend on most of the occasions when you sat as a court to hear evidence in respect of these various applications?—Yes.

And did most of the Committee attend?—There was always a fair attendance.

Then, as we know, they were adjudicated upon by retiring into the room and discussing the matter or matters?—Yes.

In the result, they arrived at the number of twenty-nine?—Yes.

And then the report of the 22nd March was made?—Yes.

Do you recollect getting a draft report of that?—I do.

And when the meeting of the 22nd March was held did the members who attended bring the draft report that had been sent to them?—I cannot speak positively.

There was unanimity about that report?—Yes.

Every opportunity was given to anybody who wished to make any objection?—Yes.

That was confirmed on the 29th?—Yes.

His LORDSHIP.—I suppose if an amendment had been proposed it would appear on the minutes?—I think our clerk would make a mem. of it.

Mr. TAYLOR.—On the 29th it was approved by the preliminary meeting of the justices. Were you present at that?—I was.

Was there any discussion or not, do you recollect?—No, not beyond the ordinary discussion we ought to have dealing with a matter of great importance. There was nothing of a conflicting character.

Were there many present?—I cannot tell you.

And at the principal meeting on the 18th April it was then confirmed?—Yes.

You, as a member of the Committee, attended what you have described as a supplemental meeting?—Yes.

You heard the claims in respect of these twenty-nine houses?—Yes.

I need not trouble you with the figures; you have the amount of the claims?—Yes.

His LORDSHIP.—What was this meeting?—The first supplemental meeting of the 30th May. There were three days.

Mr. TAYLOR.—There was a division, first, to consider who was to get compensation, and, secondly, to settle how much was to be given? Yes.

In dealing with the second you had, of course, before you the amount of the claim?—Yes.

And you had the houses divided into two classes—those ultimately agreed to and those referred to Somerset House—the eighteen and the ten?—Yes.

Had you before you the claims with respect to the eighteen?—Yes.

And the claims in respect of the ten?—Exactly.

Had you before you the evidence about the assessment of both classes of houses and their takings?—Yes.

Can you tell me, dealing with the eighteen, what was the total assessment of the eighteen?—£378.

His LORDSHIP.—What assessment? I don't know what you mean.

Witness.—The assessment of the trade.

His LORDSHIP.—It is all here in the appendix to the March report. Are you taking the forty-five or the thirty-eight as the basis?

Witness.—I am taking the poor-rate.

His LORDSHIP.—Then, it is the poor-rate assessment?—Yes.

Mr. TAYLOR.—You have not given us the right figure with regard to the eighteen?—No. It is £600. I had got on the wrong column.

His LORDSHIP.—And what were the takings of the eighteen? An average of £150 a week.

Do you mean the eighteen together made £150, and not each house £150?—No. About £8 per house per week.

Now take the ten houses?—The poor-rate assessment for the ten was £318, and the average weekly takings £117.

That would be about £11 a week each, or rather larger than the eighteen?—Yes.

Mr. TAYLOR.—And you had that material before you at the meeting of the 12th July?—Yes.

And you had the estimate of £500 which appeared in the report of the 22nd March?—You mean the printed report (counsel assented); Yes.

It says in that report that the Committee have been anxious to proceed carefully in order to gain experience, without risk of any possibility of exceeding or even going near to the maximum amount of funds at the disposal of the compensation authority?—Yes.

Was that the general view of the Licensing Committee?—I think it was.

Now come to the 12th July. I think you proposed that half the amount authorised should be raised?—Yes.

Did you know what the maximum would be?—I did; the figure is in the printed matter.

His LORDSHIP.—What figure had you in your mind as the half?—£18,350.

As a result of your judgment, did you come to a certain conclusion?—Yes, that half the maximum would be quite sufficient and more than sufficient for the purpose.

When you say sufficient for the purpose, the purpose would be to compensate these houses which it had been decided to report?—Yes.

Because, if sufficient was not raised, the licences would not be extinguished; they were provisionally, as we know, renewed.—Yes.

A SERIES OF DENIALS.

Had you any desire not to diminish the number of licences by making this proposition?—Certainly not.

The number of licences had been fixed some time before?—Yes.

Then you had no such desire?—No.

Had you any desire to impede or to obstruct the working of this Act by not providing sufficient compensation fund?—Certainly not.

Or any desire to hamper or to obstruct those who did wish to reduce the number of licences?—No.

It is said here in this article in the "Daily Post and Mercury" that you had a plan, the effect of which was to interfere with the rate of the reduction of licensed houses, "to make the rate of reduction actually less than it was under the old order of things." Now, you had some experience of the old order. Do you agree that your plan would have had any such result?—Certainly not.

And is it true you "foresaw" that the result of your vote would be to effect any such purpose?—No.

The object of this meeting of twelve was to levy the rate?—It was. I think we had other business, but the rate was the important business.

And you levied a rate sufficient to carry out the purposes of the Act with regard to the twenty-nine houses—Yes.

Were you at that meeting actuated by any desire not to carry out the objects of the Act?—Certainly not.

There is a passage in this newspaper article to this effect:—"We congratulate the trade upon the ability and courage of their friends—we had almost said their representatives"—now, are you a representative of the brewing trade?—I am not.

Have you anything to do with that trade?—Nothing whatever, and never have had, nor have any of my relations.

It is said in the article that you are also the friend of the trade. I don't know what that means, but I suppose it was your policy to hold the scales evenly for all parties?—Yes.

Now, here is a question I will ask you about these eight gentlemen sitting together at this oval table. I would like to ask you this, was there before any of these meetings at which the various topics have to be discussed, from January 19th to July 12th, any preliminary meetings of yourself and the nine?—We had no preliminary meetings at any time of any kind, except the meeting practically arranged between Mr. John Henderson and myself, and that was publicly known, to arrange the constitution of the Committee.

Mr. TAYLOR.—I don't think you quite follow the question I put. I said from the 19th January, when the Committee was appointed, to the 12th July, did the nine members attend a preliminary meeting?—Never.

But a meeting had been arranged between you and Mr. Henderson?—Yes.

Mr. Henderson was afterwards one of the members of the Committee?—Yes.

When was this meeting?—I cannot fix the date. It would be, I think, immediately after the article appeared in the 'Daily Post''—next morning, I think.

That is the only meeting there ever was?—The only meeting of magistrates that I have known to be held during the whole time I have been on the Bench.

But that was not a meeting of the nine?—Oh, dear no.

His LORDSHIP.—Do I understand that that was the only meeting of Mr. Henderson and yourself?—No. Mr. Henderson did me the honour of calling upon me when this article appeared in the "Post." There is no doubt there was a proposal privately that something should be done, and some people thought it was a very good one, and others did not think so. Mr. Henderson and myself were in a rather difficult position, because we intended to feel the pulse of the people, and the result of the article was that I presume Mr. Henderson met his people at the Reform Club and we met at the Conservative Club.

Mr. TAYLOR.—I see. That means two meetings on each side. Then you and Mr. Henderson met again?—I think we had two meetings.

Well, a meeting on each side?—We had no meeting. Mr. Henderson called upon me.

Did you see him afterwards at all?—I am always glad to see him, but I cannot say I saw him in regard to this particular matter. I think Mr. Henderson did call on me and some names were suggested at my office. Mr. Henderson, however, is here, and he will put me right.

On the 13th July you saw the article in question?—Yes.

Did you read it?—Yes.

Did you consider it?—I did.

And you objected to it?—Certainly, very strongly.

Why?—

Mr. ISAACS.—I object to that.

Mr. TAYLOR.—Very well.

His LORDSHIP.—The question is what would the ordinary person—

Mr. TAYLOR.—I agree.

His LORDSHIP.—It isn't what Sir Edward Russell intended.

Mr. TAYLOR.—Quite, my lord. (To witness): You did, in fact, object to it, and act on that objection?—I did.

MR. MORRIS UNDER CROSS-EXAMINATION.

Mr. ISAACS (cross-examiner).—You know Sir Edward Russell, and have known him for some time?—Yes.

I suppose you will agree with me that he is a highly-honourable man, whose word you would always take?—Undoubtedly.

At first can you tell me, are you aware, that these proceedings were instituted, these criminal proceedings were instituted, before any communication had been made to Sir Edward Russell on the subject?—Yes.

No letter was written to him?—No.

No call made upon him?—No.

No request to him to state anything with reference to the article?—No.

Am I to understand that you have no ill-will against him?—Not the slightest.

May I take it that you are actuated by goodwill towards him?—I am.

Does it occur to you now that it might have been better if you had communicated with Sir Edward Russell before starting these proceedings?—It occurred to me at the time, sir.

Mr. ISAACS.—Well, I am glad to hear it.

The Witness.—It occurred to me at the time, but I was advised by those directing this matter that I ought not. My legal adviser said I must not.

Your legal adviser said you must not?—Yes. I was acting under legal advice.

Is that legal adviser a member of the Licensing Committee?—No.

Had you a legal adviser a member of the Licensing Committee?—Mr. Frodsham is the legal adviser in this.

Is he one of the Licensing Committee?—Yes.

One of the faithful body of nine (laughter)! And has he acted as the solicitor in this case?—He has right through.

And is instructing my learned friend at the present moment?—Yes.

And, as I understand you, Mr. Morris, somebody advised you to start proceedings of this kind against Sir Edward Russell without communication of any kind or description with him?

Witness.—I was advised, and I think correctly. I was shown the law on the point, and if Sir Edward Russell had declined to consider any suggestion from me, our hands would have been tied, and we could not have taken any remedy at all.

May I take it that, so far as you are concerned, if you thought Sir Edward Russell did not intend to impute any corrupt or dishonest motive to you, you would have been satisfied?—I should have been satisfied.

Are you aware that immediately these proceedings were started, and Sir Edward Russell had an opportunity of answering, that he stated on oath that he had no intention of any kind of imputing corrupt or dishonest motives to you or your colleagues?—That was in the affidavit, I think. I read it, but I do not know that I thoroughly understood it in the sense that you put it. But, undoubtedly, there was some kind of explanation.

Mr. ISAACS.—I will put his exact words.

Witness.—Oh, I accept your statement.

I put a very compendious statement, Mr. Morris, and I am sure it does not require a lawyer to understand those words.—No.

You understand, don't you, that immediately formal proceedings were started, and a trial ordered—

His LORDSHIP.—Not before formal proceedings were started, because the rule nisi was obtained first.

Mr. ISAACS.—I think I went on to say the formal proceedings that brought us to this trial.

His LORDSHIP.—You mean before the court?

Mr. ISAACS.—I quite agree.

His LORDSHIP.—You see, that is all important. If you bring it before the court it is in the hands of the court, and you can do nothing.

Mr. ISAACS.—Unless the court agrees. But what I am putting to you, Mr. Morris, is that the first intimation to Sir Edward Russell that criminal proceedings were proposed was by the application for a rule nisi in the King's Bench.

The Witness.—That was so.

Speaking with reference to this article, he said that he had no idea of imputing corrupt or dishonest motives to you and your colleagues?—He said so, I believe.

And you do believe it, Mr. Morris?—Well, I think I must leave that in the hands of the court to decide.

I think you told me before that you looked upon Sir Edward Russell as a highly-honourable man, whose word you would always take?—I should like to say exactly—

Mr. ISAACS.—You shall in a moment.

His LORDSHIP.—Before you ask him whether he believes it, he is entitled to see the actual words.

Mr. ISAACS.—Undoubtedly; but I thought he would agree with the statement made. However, I don't object to the words. I am going to read them.

Witness.—It is quite understood I did not see this affidavit until the matter was in court.

Mr. ISAACS.—Of course, that is what I am suggesting to you.

His LORDSHIP.—You mean when the rule absolute was granted?

Witness.—Yes.

Mr. ISAACS.—I think you have looked at the affidavit?—I have not.

Perhaps it would be simplest if I read it. I think you will see that it goes even further about the question I put to you, because I see from one passage that he holds in respect and esteem all the complainants. That will include you, Mr. Morris; and he goes a little further—

His LORDSHIP.—It involves, of course, reading the whole of the argument of what took place.

Mr. ISAACS.—I don't know that it does.

His LORDSHIP.—Yes, it must be so; and I only warn you with regard to that. It is quite clear, if you read this, the whole argument, including Mr. Asquith's argument, must be read, and the observations of the court upon it. You are suggesting that on reading this affidavit he should have taken a different course. You cannot suggest it unless you have not only the affidavit read but also what else took place.

Mr. ISAACS.—I really don't care, one way, whether I read it or not. It is sufficient for my purpose that you, Mr. Morris, knew he had expressed his esteem and respect for you, and did not intend to make any personal imputation.

Witness.—That, I believe, is in the affidavit.

I must put this question to you again, owing to your hesitancy with reference to it before. Do you seriously mean that you do not accept the statement that, as far as Sir Edward Russell's intention was concerned, he had no intention to reflect upon you?—Do you ask me to believe what Sir Edward Russell said in the article?

I mean in that paragraph I have read?—I do not think that Sir Edward Russell, being a perfectly honourable man, would say anything that he did not mean, but I think it came too late.

That is a perfectly legitimate observation, and I will deal with it later. Let me suggest to you that whatever the effect was it came the moment he had the opportunity?—No; I do not agree.

You started the proceedings. No complaint had been made to him before that it bore a certain imputation, and he says, whatever the effect of the article might be, "I have no intention of saying that?"—I must not argue with learned counsel. There was three days' interval before the legal proceedings were taken, and I think a public man, and Sir Edward Russell had been an honourable man, if his attention had been drawn to the article there would have been some contradiction.

I have pointed out to you that no communication of any kind was made to him with reference to it, but I do not want to go back to it. Let me ask you some questions with reference to the position of the licensing body. You will agree with me that these questions have been largely decided on what I might call party political lines?—The licensing?

Yes.—I do not know.

Was not the Committee appointed on those lines?—The first suggestion of the Committee came from Sir Edward Russell's paper.

Was this Committee of sixteen appointed on strictly party political lines?—The Conservative colour, undoubtedly, we selected—not selected, but with a great effort I persuaded, I think, nearly the whole of the gentlemen who came forward. I was deputed to seek round the Conservative Club to see those who were likely to serve on the Committee, and I had the greatest possible difficulty in securing the gentlemen who came on the work.

They do not care for the work?—They are public men, and have not the time.

But you did succeed with your army of Conservatives?—I succeeded in getting gentlemen to do the work of an important character.

Who were Conservatives?—With the exception of one.

Who was that one?—Mr. William Oulton ("Oh, oh," and cries "He is a Unionist"). He does not belong to the Conservative party. He belongs to the Reform Club.

His LORDSHIP.—Mr. Isaacs, are you not going too far?

Mr. ISAACS.—With great respect, your lordship, I must go into it. I cannot help it.

His LORDSHIP.—You wish to put your question, but I think it a pity to go into whether Mr. Oulton is a Conservative or a Liberal. He is only one out of a number. It is not important.

Mr. ISAACS.—It is important to me. (To Mr. Morris): I will put it to you again. Mr. Oulton had been a member of the Reform Club, but his views had changed?—He is now a Liberal Unionist and a Wesleyan.

He and the other eight, that made nine Conservatives and one Unionist. There was Sir Thomas Hughes, of whom we have already had a description, and on the other side there were six Liberals?—Yes. Well, I say "yes" rather rapidly. I rather doubt whether there are six Liberals.

Whose Liberalism are you doubting (laughter)?

His LORDSHIP.—It is quite unnecessary to go into this, but I will leave it to you entirely.

Mr. ISAACS.—That is my complaint with reference to the case. I regret very much I have got to do it, but I cannot help it.

His LORDSHIP.—I shall have to tell the jury that we have nothing to do with politics in this case. The question is whether the facts are stated truly, and what is the meaning.

Mr. ISAACS.—To a great extent it is a question as to whether the libel imputes dishonest motives.

His LORDSHIP.—That is by no means, because if the opinion is founded on incorrect facts—I am not saying that it is—it is not necessary to suggest corrupt motives.

Mr. ISAACS.—"Corrupt motives" is the burden of the complaint. However strong the article may be, if it does not impute dishonest motives, then it is perfectly admissible and fair comment.

His LORDSHIP.—I don't accept that. If it is defamatory and not fair comment it is libel. In whatever sense, if it is defamatory and not fair comment, it is libel. It is not necessary to impute corrupt motives. However, we shall see.

Mr. ISAACS.—It depends upon what fair comment is.

His LORDSHIP.—Fair comment is fair comment upon facts. The facts upon which this is founded are incorrect.

Mr. ISAACS.—In order to found the observations I am going to make, whether the fact is £500 and not £5,000 or £18,000, I do not care.

His LORDSHIP.—The whole reversal of the figures is suggested. You say that £17,500 was granted, and that £21,000 was necessary. They say all that was necessary was £15,000, and we granted £18,500. I am not expressing any opinion.

Mr. ISAACS.—When I come to deal with that, and have an opportunity of putting my view, I am going to attempt to convince your lordship that the question really is whether this is comment, comment that any newspaper is entitled to make, and that, of course, depends upon what innuendos it carries with it.

His LORDSHIP.—You are going to say that the only question is whether there is corrupt motives?"

Mr. ISAACS.—I won't say that is the only question. I will say it is the main question—the burden of the criminal charge. It is not an ordinary action for libel. It is a criminal charge, based upon an innuendo being placed on the facts.

His LORDSHIP.—There is a great deal more than that. There is the suggestion of obstruction of the Act.

Mr. ISAACS.—All the facts have to be taken into account in deciding whether or not this constitutes a criminal libel.

His LORDSHIP.—If it is a libel in law, is there any difference in criminal libel and actionable libel? I am not aware of any.

Mr. ISAACS.—I should think a very material difference. In an ordinary libel you cannot prosecute by way of criminal information.

His LORDSHIP.—We have got rid of the criminal information. We are now trying the action in the ordinary course.

Mr. ISAACS.—Of a criminal trial.

His LORDSHIP.—The criminal information for indictment is quite immaterial.

Mr. ISAACS.—In order to prove what your lordship says, to answer the point, suppose an action for libel by one of these magistrates to recover damages, the question of public interest is wholly immaterial. In an ordinary case, if the libel is justified, there is an end of the case.

His LORDSHIP.—We were speaking of fair comment. You have got to prove more than justification.

Mr. ISAACS.—I have got to prove that it is for the public interest. I go further, and I shall say that the jury have got to consider this as a criminal libel. But, when I come to deal with the question, I will explain my view, and I do not think there will be any real difference in our views. It is a question of what is fair comment. I think your lordship is not giving due weight to some of the points that I have got to establish. I have got to establish that these facts are correct upon which the comment is made. One of the points that I have made with reference to it, and one of the things complained of in the article, is that we have dealt with this as if the one party had tried to prevent the other from carrying out its reforms. It is no pleasure for me to discuss politics; I have got quite enough to do with them outside this court (laughter).

His LORDSHIP.—I am glad to say I have not.

Mr. ISAACS (to witness): Come, now, Mr. Morris, give me a frank admission that the six gentlemen are at any rate believed to be Liberals?—I believe they are. There is an exception to one. It would be very presuming on my part, but I accept them as Liberals.

His LORDSHIP.—One is what we may call doubtful (laughter).

Mr. ISAACS.—Is it not right to say this: that the whole body of the licensing justices consists in the main of members of the Conservative or Unionist party?—I believe they do.

And was it not for that very reason that you were to have a selection of ten out of the sixteen on the Licensing Committee?—Yes. I suggested that they should have a majority.

And was it not you that suggested to Mr. Henderson that you must have ten out of the sixteen?—No, I did not suggest that. I suggested nine and Sir Thomas Hughes (laughter).

That gave you what I may call effective control?—Quite right.

The suggestion which had been made in the "Daily Post" was that there should be an equal number of both sides nominated?—That was in the article, I gather.

But that did not commend itself to you?—In a sense, no, it did not.

The Conservative party, like any other party, does not like to give up an advantage if it gets it?—Well, I don't know about "advantage."

But it is an advantage to have effective control?—Of course. But "effective control" and "advantage" is not to be taken in the literal sense in which you use the words.

I am not suggesting that you were putting anything in your own pockets, or anything like that?—If the suggestion is that there is any desire on my part to do anything but what was reasonable and right, I should deprecate that.

I am not suggesting for one moment that you were getting any personal advantage out of it when I use the word "advantage."—I am quite sure you would not suggest that.

But I am not going to suggest that I did not impute; on the contrary, I am going to suggest that it did give you a political advantage?—I can assure you that politics were not introduced into the matter except in so far as forming the two parties or two sets of men.

Did not that give you a political advantage?—No.

Why was it done, then?—To represent the two parties on the bench.

And why should the two parties on the bench be represented? Why should the Conservatives be anxious to have a majority if it was not to give the Conservatives a political advantage?—You put a difficult question (laughter).

I agree.—No, a magistrate, whether he be Liberal or Conservative, goes on that bench with the desire not to advance his

party's or a party's interests. I am quite sure that those gentlemen who think different from me are imbued by the best and most honest motives, and I ask that those who are associated with me should be treated in the same way.

You have told me that you were to have a majority, and that it gave you an effective control?—I do not admit effective control in the way you use the term.

What I mean by "effective control" is that you, the Conservatives, had a majority, and that, therefore, what you wished to be law, or the decision of the majority, would be the decision.—Not in that sense; not in the sense that we were acting as magistrates in our political capacities.

What other sense could it be?—We were there to administer the Act, an Act we are charged with frustrating and a Conservative measure.

Well, take all the credit for it; still, tell me what you mean by "effective control"?—If you confine yourself to the word "majority," I don't think we shall have any disputation at all.

Well, I will say "majority" instead of "effective control." The Conservatives were to have a majority?—That is undoubted.

You thought it was an advantage to have the Conservatives in the majority?—Yes, on the Bench and everywhere else (laughter).

And, thinking that, you were desirous to get a majority on the Committee?—Yes. The facts are there; we can't dispute them.

And the consequence was that what the Conservatives desired would be the decision of the Committee?—What the Conservatives desired, acting as magistrates and in an honourable way as magistrates, and not as Conservatives pure and simple.

But as Conservatives and magistrates?—I do say this, that none of us went there to advocate anything personal or political.

I am not suggesting you went there to advocate anything personal, but that you desired that what you wished should be the decision?—It would be the fact, assuming, of course, that we always voted the same way.

I agree. Sir Thomas Hughes, for example, has very often voted against you?—Oh, I don't know.

Sir Thomas Hughes is a Conservative; but, at the same time, he has taken a much more—I want a neutral word—progressive view of his duties; is not that so?—No, I don't think so. I give Sir Thomas Hughes credit for being a most excellent chairman of the Licensing Committee, and one, I think, it would be very difficult to replace.

What I am putting to you is that his views went further in the direction of reform than yours?—No, they don't.

Do you mean that?—I do.

Or the other eight?—I will speak for myself, if you will allow me.

What about the others; can't you speak about them? You selected them?—No, I did not. I invited them. I did not select them.

You know pretty well what their views are on these questions by now?—Yes, and always have done.

And their views did not go so far in respect of the reduction of licences as those of Sir Thomas Hughes?—I believe they do within a certain compass. They desire to do what is right, like myself. I don't go to take away a man's property. I hold these convictions honestly. I may be wrong, but I hold them honestly.

I am not attacking in the slightest way the purity of motives of anybody. I am drawing no distinction between the purity of Sir Thomas Hughes and of yourself, or of your colleagues. What I am putting to you is simply a question of policy—did not Sir Thomas Hughes, in his policy, go a little further in the direction of reform than you and the others were prepared to go?

Witness.—I am sorry not to agree with you upon one point; I don't agree upon the word "policy." The word "policy" was used earlier in the case. Now, I submit that the Licensing Bench have no "policy" whatever. They are there to administer the law. A "policy" must have been prearranged.

Mr. ISAACS.—I won't discuss the meaning to be given to the word. We will go back to the question, and I will try to get the answer another way. Does not Sir Thomas Hughes hold views upon this licensing question which go further in agreement with those of the six Liberals than your own views and those of your other colleagues?—No, I don't think he does, though Sir Thomas Hughes holds very broad views upon the licensing question (Mr. Isaacs: I agree.) and very impartial views (Mr. Isaacs: I will take that).

And the views of your colleagues—of the nine—including yourself, are not always quite as broad as the views of Sir Thomas Hughes?

Witness (after a pause).—Sir Thomas Hughes and I don't always agree, but we always agree to differ (laughter). Whether or not we agree on details, we always agree on principles, and I am as anxious as is Sir Thomas to carry out the law.

Will you go back to the question, and may I take it the evidence you always agree to differ is evidence that sometimes the views of Sir Thomas Hughes are a little broader than yours?—Yes (laughter).

Now, is it not a fact that these men you elected, "invited," rather, I beg your pardon, the gentlemen you "invited," the other

eight, were "invited" by you without the submitting of their names in any way to Mr. John Henderson or to his colleagues?—Quite so.

And, in fact, am I not right in this, that what happened at the meeting of the justices when the Committee had to be selected—I mean the Licensing Committee, the sixteen—the matter was, if I may use the expression, cut and dried between yourself on the one side and Mr. John Henderson on the other?—Yes, that was suggested to us.

Was not Mr. Henderson seeking to get a better representation, that is, a larger number of what I may call his side in the Licensing Committee?—Yes.

And you naturally objected on account of your larger majority on the Bench?—Yes.

And you thought it would be fair if you came to the arrangement of the ten and the six we have heard of?—Yes.

Now, one thing further upon this. Generally speaking, as far as your knowledge goes, brewers and the brewing interest favour your side of politics, in Liverpool, at any rate?—Generally speaking, yes.

I suppose it is plain, from the resolutions and amendments we have heard read, that the general question between your side and the more neutral side was that they said you ought to take as much power as you could to levy under the new Act?—Yes.

Their view was that you ought to take the power to levy the maximum rate, so that you would have the maximum amount obtainable under the Act to draw upon for the reduction of licences?—I cannot speak collectively, but I know one or two who held those views pretty strongly.

And they held also strongly the other view, did they not—that it was desirable, in order to carry out this policy which they held, of reducing the number of licences as much as possible, that even though you did not use up all the compensation money for the one year, it was a great advantage to have a reserve fund for next year, in case you had to reduce the number of licences next year?—I should like to answer that in the affirmative without qualification.

Mr. ISAACS.—I am quite satisfied (laughter).

Now, will you let me pass to what took place during the time you were discussing the question of how many houses were to be closed—or, rather, to be quite correct, were to be reported for extinction by the licensing body? At one of the meetings, was it not suggested that the levy you should agree to was to be decided by the number of houses you thought ought to be reduced?—Yes.

That was at the second or third meeting you had for the purpose of inspecting the houses?—Yes; early in the course of the business.

That was proposed or suggested by someone on your side?—Yes.

Did Sir Thomas Hughes strongly object to that course?—Yes.

Did he express the view that it was an improper proceeding?—I don't remember that.

I don't mean to say that offensively. What I do mean was that Sir Thomas said it was not right it should be done in that way until you had decided what was the number of the houses to be extinguished?—Quite so. May I say I think that resolution was proposed, to a certain extent, to narrow the other, as the Licensing Act allows it to be done one way or the other. You may fix the levy and take away the houses in proportion to what you have, but I think Sir Thomas thought it should be the other way about; you should first decide upon the number of houses to be extinguished, and then the levy was a simple question of arithmetic.

His LORDSHIP.—On January 31st they resolved to consider the houses first and the levy afterwards, and to do the opposite would be contrary to their resolution.

Mr. ISAACS.—That would be proper, according to the resolution of the Committee. Thus, I think, we both mean the same thing. (To witness) Sir Thomas Hughes took a strong view, did he not, about four or five at least of these houses, in respect of which it was decided that they should not be recommended or reported for extinction?—I cannot call to mind.

Mr. ISAACS.—I can give you the names of the houses if you like, but I do not want to mention them openly. Would you look at this list? I do not want to mention the house in public, but do not you remember that Sir Thomas Hughes recommended that the house should be reported for extinction?—No. I recollect one of these houses—the second one.

That is quite sufficient. Was not that one in respect of which he said, after it had been decided that it should be passed, and after the evidence had been heard, that "if you pass that you will pass anything?" I do not mean you personally. I mean the committee?—I rather thought it was when we were visiting.

But whether it took place after you had inspected or after you had heard the evidence, you remember him making the observation?—I recollect the observation.

Mr. ISAACS.—Very well.

THE LENGTH OF THE TRIAL.

At this stage his LORDSHIP asked Mr. Isaacs whether he thought it would be necessary to put another case in the following day's list.

Mr. ISAACS replied that he thought not. His friend (Mr. Taylor) and he had had some conversation about it. Mr. Taylor had some more witnesses who could give evidence to the same effect as that given by Mr. Morris, but he did not propose to go right through the story with them, nor did he (Mr. Isaacs). They would take a sample, and then they would know what the bulk was (laughter). He thought they would want the whole day, and he hoped they would be able to get through in the day.

Continuing his cross-examination of the witness, Mr. ISAACS said:—You know, do you not, that in the pleas to the indictment—the information which we are now dealing with—that again Sir Edward Russell has disclaimed any imputation of corruption or dishonest motives or conscious unfairness on your part?—It makes it difficult for me to answer as I should like, because he goes on to justify it, but no doubt he does say that.

Of course, so far as the trade is concerned—generally speaking, the trade would prefer that the maximum of compensation is not levied?—On the contrary, I am informed by a gentleman who is to be called as a witness that the trade would prefer to have the maximum.

Who is it to be called as a witness who says this?—Sir Thomas Hughes. He informed me that the brewers preferred the maximum. I go further than that.

Oh, you go further than that?—Yes. I know of my own knowledge that a large brewer would prefer to have the maximum.

You have discussed it with them?—I have. I thought Sir Thomas Hughes had been under a mistake.

But this depends entirely upon the number of houses you have in any particular district?—I did not ask him about that.

Do you not think that that might be the explanation?—I am not able to say.

But you think I may be right?—No.

If the rate is levied upon a house in any particular district, and then, of course, if a man has a small number of houses, he may prefer that there should be the maximum rate levied?—The levy extends over the whole city.

Must it not depend upon whether he is able to pay the maximum levy?—That may account for the large brewer taking that view. But there is another reason, which, with respect, I do not wish to give.

I do not want to press it. I will let it pass, and we will judge for ourselves. The compensation, whatever it is, which is levied, is to be paid by the houses which are left?—Yes.

If you get, say, a hundred houses in a district, and you are going to extinguish five of them, the other ninety-five have got to

pay the compensation assessed in the Act of Parliament which is to go to the other five?—Yes.

Of course, if you only levy a half rate, these ninety-five will have to pay only half?—Yes, that is a matter of arithmetic.

RE-EXAMINATION OF MR. ISAAC MORRIS.

Re-examined by Mr. TAYLOR.—I should like to have your other reason.—The reason given by one gentleman in the Magistrates' Room in discussing whether it should be a half or a full levy was that it would crush out the small man, and make it difficult for other people to exist. I recollect the words exactly.

His LORDSHIP.—Would it be correct to say that you voted for the small levy because the brewers would like it best?—Certainly not, my lord.

Did you think the brewers would like it best?—They were not in my mind at all. I voted for the amount because I thought it would be sufficient to pay the compensation.

Mr. TAYLOR.—Now, you have had read to you the plea that Sir Edward Russell denies the meaning or construction you put on this article.

His LORDSHIP.—It is not for him to put a construction upon it; it is for the jury.

Mr. TAYLOR.—I will show the construction put upon it in the information. (To witness): You have had read to you part of the justification pleaded by Sir Edward Russell adhering to the words of the article?—Yes.

I suppose that had you known—you have told the jury what you think of Sir Edward Russell—that he wrote that article you would attach very great importance to it?—Undoubtedly.

Any charge made by him you would treat as a grave matter?—Yes.

You have been cross-examined about no communication with Sir Edward Russell before proceedings were undertaken. I understand you to say that you had legal advice on that matter?—I had.

A fruitless communication would have imperilled the proceedings?—I had a suggestion, not from Mr. Frodsham, but from my own solicitor, and I know a little about law; and I looked up Stone and found exactly the position (laughter).

Replying to further questions, witness said that he recollected nothing of an affidavit made by Sir Edward Russell on the 24th July, but he knew that three or four days had lapsed before proceedings were taken.

At any rate, whatever the time, he did not say what he meant by the article?—I looked at the "Post" each morning, and there was nothing said or done with reference to the article, which I was very much surprised to see.

Did he, by his counsel in the Divisional Court, state that he adhered to every word of the article?—I can scarcely answer that.

Mr. ISAACS.—Why did you object to give me the other reason about compensation which you gave to your counsel?—I had a delicacy. I did not wish to say anything that would cast a reflection upon a brother magistrate.

And this is why you did not wish to state it?—Witness's answer to this last question was not audible.

SIR CHARLES PETRIE'S EVIDENCE.

Sir CHARLES PETRIE was then called, and examined by Mr. F. E. Smith. He said he had been Lord Mayor of Liverpool, had been a member of the Liverpool City Council for some years, and was a member of the Licensing Committee.

At this meeting, at which you were present, and at which the number of houses to be scheduled was under discussion, did you give whatever opinion you gave honestly throughout?—Certainly.

And in what you judged to be the best interests of the community?—Yes.

At the meeting of the 12th July, is it true that the only question that was before the meeting for decision was as to the amount of levy on a number of houses which had already been determined?—Yes.

You are yourself a man with a very extensive knowledge of business and experience of it?—Fairly so.

And did you address yourself to this question without regard to any other consideration except what amount of levy might be necessary for the particular purpose?—That was all that was in my mind

Is there the slightest truth in the suggestion that you did not desire to diminish the number of licences in the city, but rather to hamper and obstruct those who are striving to effect a sorely-needed reduction?—No truth whatever in the statement

Is there any truth in the suggestion that you had shrewdly foreseen that the effect of your decision would be to make the rate of reduction actually less than it was under the old order of things?—None.

Is it true that you sat on that Bench and gave that or any other decision as the friend or almost as the representative of the licensed victualling trade?—Absolutely untrue.

You intended as long as you were on that Bench to do your duty as a magistrate honestly?—Yes.

Giving your vote as you did, had you any desire whatever to assist the brewing trade?—None whatever.

CROSS-EXAMINATION OF SIR CHARLES PETRIE.

Mr. RUFUS ISAACS.—Licensing was rather new work for you, was it not?—Yes, I admit that.

And when you were selected you had no experience of it?—None whatever.

So that, I suppose, it is not too much to say that you were a good deal guided by Mr. Morris, who had invited you to become one of the body?—I used my own mind and opinions. I have always taken an interest in licensing matters as a public man.

I suggest to you that you would be influenced by his view?—No, I do not think I was; I always have views of my own.

I hope so; but he had had considerable experience?—Yes.

And, I suppose, you knew he had had considerable experience when he came and asked you to form one of the nine?—I knew he had been connected with the Licensing Committee for years.

And had taken a rather prominent part in it?—Quite so.

And is it too much to say that his past experience might have afforded some assistance to you?—Possibly.

You have heard Mr. Morris's evidence, and I suppose you agree with it?—In the main I do.

I suppose I may take it that, generally speaking, your views and Mr. Morris's and the majority of your body of nine coincided?—Well, frequently.

A little more than that?—We really never had much discussion on the Committee.

When you were unanimous it was not necessary?—We were not always unanimous.

I mean when you had divisions, generally speaking, your views and the others—I mean those of you, Mr. Morris, and the rest—agreed?—That is so.

Your policy was the policy which, substantially, the nine of you had?—Yes, practically.

You, I think, have known Sir Edward Russell for a number of years?—Yes.

And know him well?—Yes, fairly well.

And may I take it equally from you that you look upon him as a highly honourable man, whose word you would accept?—Yes, I always esteemed Sir Edward Russell.

And you would accept any statement that he made on oath?—Quite so.

And you accept the statement, whatever the value of it may be, that he had no desire to impute to you any personal motive or any corruption or dishonesty?—Yes, no personal motive.

May I not take it that it would be inconceivable that Sir Edward Russell should suggest that of you?—Quite so, I quite agree.

You never thought that he meant to suggest that of you, did you?—Not personally.

Were you aware that no communication had ever been made with Sir Edward Russell before these criminal proceedings had been launched?—Yes, I was aware.

Did you take advice from a lawyer?—We had a consultation, and we were given advice by our lawyer.

Was that Mr. Frodsham?—Well, Mr. Frodsham was acting as solicitor, but he had a higher opinion than that, I suppose.

I suppose you were not the instigator of these proceedings?—I am not exactly the instigator, but I am one of the number, and must take my share of the responsibility if there is any.

But can you tell me who was the first person to move in it, who was the instigator in the proceedings?—I really do not know.

Who was the first to approach you about it?—I think it was Mr. Morris, but I am not at all sure.

I mean the idea of criminal proceedings against him was rather startling to you, was it not?—Well, I never knew there was such a thing before (laughter).

There are many like you, I assure you. You know, of course, that in these very proceedings, the issue and the matters which we are trying before my lord and the jury, he has disclaimed all intention of reflecting upon you or your colleagues, either by imputing personal or dishonest or corrupt motives?—I take it that what he said in his affidavit means that.

His LORDSHIP.—I am afraid I shall have to tell the jury that that is absolutely immaterial. You know, you are a lawyer; ought I not to tell them?

Mr. ISAACS.—I don't think so.

His LORDSHIP.—The question is what other people outside would think.

Mr. ISAACS.—I am upon really quite a different matter. I am putting my question with quite a different purpose.

His LORDSHIP.—To what issue?

Mr. ISAACS.—It is not necessary that I should put it to an issue.

His LORDSHIP.—Is it relative to the question of fair comment or justification?

Mr. ISAACS.—Certainly, upon them all.

His LORDSHIP.—Very well.

Mr. ISAACS.—I do not shirk from it in the slightest degree in what I am going to put to the jury. I am at a disadvantage in that you have not heard my case.

His LORDSHIP.—I am only trying, if possible, to get rid of the irrelevant and come to the relevant.

Mr. ISAACS.—Of course, what is relevant it is difficult to determine until I have had an opportunity of putting my case. What I am going to suggest is that all these things are material with reference to the question of fair comment.

His LORDSHIP.—I do not see it at present; you must convince me.

Mr. ISAACS.—Fair comment is a matter of what the jury think. What I want to say, if there is to be no further questions put to the witness upon it, I would not mind saying now.

His LORDSHIP.—I am not going to interrupt you.

Mr. ISAACS.—I will deal with it. I won't shirk it; your lordship knows I won't shirk any issue that your lordship puts; anything that your lordship mentions I will deal with.

His LORDSHIP.—I thought it better to point it out.

Mr. ISAACS.—Much better. I am obliged to your lordship, it gives me the opportunity of addressing myself at once to what your lordship thinks. (To witness): The "Liverpool Daily Post" has always taken a very prominent part in advocating temperance reform?—Yes.

The "Daily Post" has been, in that respect, the leading organ?—Yes.

And Sir Edward Russell has been connected with the "Daily Post" for a great many years?—Yes.

And your view, with reference to Sir Edward Russell, I think, and of his paper, is that the "Daily Post," speaking as to your experience of the journal for a great many years—you say, in effect, it is your view that the "Daily Post" has always maintained its prestige as a first-class paper, and there is no doubt that it has dealt in an impartial manner with those who differ with its politics, and that the attitude of the journal to them has always been one of kindess, courtesy, and consideration?—That is my experience; I have always been treated with kindness and consideration by the "Daily Post."

And you have expressed that view?—Yes; but there are, of course, exceptions to every rule (laughter).

Then may I, with this one exception, claim a good character for the "Daily Post" for fifty years?—With this exception.

His LORDSHIP.—And that is why you were so much surprised at this article?—Yes (laughter).

The court stood adjourned until 10-30 a.m. the following day.

SECOND DAY'S PROCEEDINGS.

MR. MORRIS P. JONES'S EVIDENCE.

The case for the prosecution was continued, the first witness called being

Mr. MORRIS PATERSON JONES, one of the complainants. Examined by Mr. Taylor, he said he was a solicitor, and had been a justice of the peace for the city since 1892. He was appointed to the present Licensing Committee. It was the first time he had been on the Licensing Committee.

Had you any great desire to get on that Committee?—No. I attended as many of the meetings as I conveniently could.

And some of the inspections?—No, none of them.

You had something to do, I suppose, with the selection of the twenty-nine houses that were refused?—Yes; I adjudicated upon some of them.

What you did was to hear the evidence given in court?—Yes.

In adjudicating on these cases did you to the best of your ability bring an honest judgment to bear on the evidence?—Yes; I exercised my judgment to the best of my ability.

Coming to the meeting on July 12—the Committee meeting held, among other purposes, to raise the levy—you had the same materials that Mr. Isaac Morris had before him?—Yes. I consider that we had to raise merely what was sufficient to meet the requirements of compensation for the houses which we had decided to refuse, and I satisfied myself that the amount which we decided upon was sufficient for that purpose—as a matter of fact, more than sufficient, I thought.

Did you come to that decision about raising one-half with any desire to assist the brewing trade?—No, certainly not.

Or with any desire not to diminish the number of licensed houses in Liverpool?—No.

Or any desire to make the rate of reduction less than it had been?—No.

Or to hamper and obstruct those who have been called reformers?—Certainly not.

Are you in any sense a representative of the brewing trade?—Not in the least.

When was your attention first called to the article of the 13th July?—I think I saw it on the day it appeared.

Witnesses who preceded you were challenged because they did not communicate with Sir Edward Russell. Did you communicate with him?—I did not.

Did you consider about that?—I did.

What was your view?—I considered the matter from a legal point of view. I considered what the remedy was for what appeared to me to be a very gross libel, and I came to the conclusion——

His LORDSHIP.—Is it worth while to go into this matter again? I shall have to tell the jury, shan't I, that we have nothing to do with that?

Mr. TAYLOR.—Yes, my lord, I think so.

His LORDSHIP.—I think we had better leave it out.

Mr. TAYLOR.—I propose to ask this question. Did you, with the others, instruct Mr. Frodsham?—Yes. I should like to say this, my lord——

His LORDSHIP.—No, no. I think you had better not say anything, because I can hardly tell whether what you say is evidence or not.

Mr. TAYLOR.—I propose to ask, Were you informed that counsel's opinion had been taken?—I was.

CROSS-EXAMINATION.

Cross-examined by Mr. ISAACS.—How long have you been a member of the Licensing Committee?—I have not been acting on the Licensing Committee before, but have attended the Bench on certain occasions.

As a solicitor?—No, as magistrate.

You were not at all anxious to become a member of this Committee?—No.

You did not volunteer to become a member?—Certainly not.

Mr. Morris sought you out?—Mr. Morris asked me if I would consent to be on. I took two or three days to consider. I considered it from the public point of view, and consented.

Did Mr. Morris tell you that he was asking some other gentlemen?—Well, I think I knew he was.

Did you know that he was forming, or inviting, a number of Conservatives with the object of there being a majority on this Committee?—I think it is probable I knew it.

Don't you think it is more than probable?—Oh, yes, I think I did know.

Well, then, you perhaps might tell us "Yes," without saying "probably." You did know it, and you went on to form one of the select band?—No, I deny that.

Did you not go on to form one of the Conservatives who were to be the majority?—No. I went on as a public man to perform a public duty. I consider that politics had nothing to do with it. I deny the insinuation you make.

Why were you selected?—I care not why I was selected. I accepted office, and I endeavoured to perform my duty.

Didn't you know perfectly well that Mr. Morris came to you because you were a Conservative?—I don't know what the motive was.

Do you mean to tell me that you did not know?—I think probably he would not have asked me if I had not been a Conservative.

Don't you think it is a little more than very probable? Don't you know perfectly well that you never would have been asked if you had not been a Conservative?—Possibly I might not.

Don't you know it as a fact?—No, I don't.

Am I to take that as your answer?—I did not go on as a matter of politics. That is what I say.

But you were asked as a matter of politics?—I cannot speak for Mr. Morris.

Oh, yes, you can. You shall tell us. Will you tell my lord and the jury your answer to this question? Were not you asked because you were a Conservative?—I think it is very probable.

"Very probable," and that you knew very well that that was Mr. Morris's reason for asking you? Come, now, did not you know very well that that was why Mr. Morris asked you?

The witness hesitated.

His LORDSHIP (to witness).—You must answer, you know.

Witness.—I think it was that. Probably it was.

Mr. ISAACS.—And did not you know that his reason for asking you was that there might be a Conservative majority on the Licensing Committee of the Liverpool justices?—I believe that was his idea.

So that you might keep in the hands of the Conservatives the effective control of the licensing proceedings of that Committee?—Do you mean whether that was his idea or mine?

His?—I think that possibly was his idea.

You having been appointed on this Licensing Committee, will you tell me how many times you attended to your duties by going to the inspection of the houses?—I never went to the inspection of the houses.

But you joined, you know, from a public point of view, to do your duty to the public?—Yes, I did.

Part of your duty was to go and examine the houses which it was proposed should be reduced?—Well, I did not look upon that as my duty.

Part of your duty?—No, I did not consider it was even part of my duty.

You were one of the body of sixteen?—Yes.

And you were one of the select body of nine?—That has nothing to do with it. Do you wish to know what I considered my duty?

Oh, no; it is not of the slightest interest at all. You know perfectly well, don't you, that you had to consider what the wants of the neighbourhood were?—Yes.

And it was also your duty to consider whether a reduction of licences should be made?—Yes.

And it was your duty to see which, if any, of the houses should be extinguished?—Well, it was my duty to consider it judicially.

To consider it judicially! And I suppose that in order to consider it judicially it was, at any rate, desirable to inspect?—I don't consider it was desirable.

You didn't like the inspection?—No, I didn't like it.

You mean you didn't like the job of going round?—No, that was not the reason. Do you want to know the reason?

I have no objection.—Well, the reason was I thought it was outside of our duty.

(A slight exclamation of surprise was audible in court.)

Mr. ISAACS.—What! Outside the duty of a member of the Licensing Committee to go and inspect the public-houses in respect of which a report was to be made to the justices?—I did not consider that I was appointed for this work.

His LORDSHIP (interposing).—You will remember, Mr. Isaacs, that the point was very seriously argued, and it was put very strongly, that all the Bench ought to do was simply to listen to the evidence given in court.

Mr. ISAACS.—And it was decided to the contrary in consequence of the Farnham case, and hence the Licensing Act of 1904 was passed.

His LORDSHIP.—It was never said that it was the duty of the justices to inspect the houses, but that they were entitled to do so.

Mr. ISAACS.—What your lordship is dealing with is a question which arose prior to the passing of this Act. (To witness): Now, Mr. Jones, I understand that you are a solicitor?—I am.

And being a member of the Licensing Committee, and reading a good deal about the new Act, I suppose you knew the Farnham case, and, of course, you had also studied the Act?—Yes.

Then you knew perfectly well that you were entitled to go and inspect these houses?—I knew that I was entitled to go.

And you knew that some of your fellow justices were going?—Yes.

And did you think that they were doing anything contrary to their duty?—I told them they were doing something injudicious, and which I thought was outside their duty. I should have preferred not to go, and I told them so.

Did not Mr. Sanders (clerk to the justices) quote the Farnham case to you, so that there could be no mistake about it?—Yes.

And yet you did not go, and did not make any inspection at all?—I did not inspect the houses.

But you voted?—Yes, after hearing the evidence.

And you also voted as the rest of your party did?—I do not say so.

Tell me an exception?—I cannot give an exception.

Mr. ISAACS.—I agree.

Witness.—I voted with the majority.

And the majority was the majority of your own party?—In some of the decisions the voting was unanimous.

We are only speaking of divisions. Did you not vote as the rest of your political party voted?—I cannot recollect any case in which I differed, but I think there were some cases.

Then I may take it that you voted according to your political party?—I did not vote politically.

I quite understand that. You did not vote politically, but you voted as your party did? Do give me an answer. I may take it you did?—Yes.

I suppose you read the Liverpool papers?—Yes.

I presume you read the "Courier"?—Yes, at times.

And, I hope, the "Post"?—Well, I think so.

Do you know that there was a dinner of the Liverpool Licensed Victuallers' Association in the month of November?—No.

You didn't read about it?—No.

A dinner in which these very questions were discussed about the Licensing Committee?—No.

You mean you never read it?—I don't remember.

His LORDSHIP.—On what issue is this material? It was after the libel. Really, Mr. Isaacs, I am sure you will do your best to

confine yourself to what is material. Tell me the issue on which this is material? Otherwise we may go on for days. If you will tell me on what grounds——

Mr. ISAACS.—Really, my lord, it is a little embarrassing when I am in cross-examination to be asked to state the issue upon which I am putting the question.

His LORDSHIP.—I must ask you, and I am entitled to ask you, upon what issue, because it is my duty to rule out all irrelevant matter.

Mr. ISAACS.—But when I am cross-examining it is unreasonable to ask me——

His LORDSHIP.—You have put the question.

Mr. ISAACS.—Well, I will answer it. What I want to put is for the purpose of showing that "the trade" were grateful for the protection given to them by the voting given by the majority.

His LORDSHIP.—Supposing they were, what is the issue?

Mr. ISAACS.—The issue raised yesterday by the question put in which it was suggested by Mr. Morris that the raising of the levy to the full extent was a thing that "the trade" preferred.

His LORDSHIP.—You brought that upon yourself. Therefore that would hold in cross-examination.

Mr. ISAACS.—Well, I propose to put the question. If you rule against me, I, of course, give way.

His LORDSHIP.—What does Mr. Taylor say?

Mr. TAYLOR.—I object, certainly.

His LORDSHIP.—Very well.

His LORDSHIP (to the jury).—Gentlemen, we are obliged to keep within limits, otherwise we may go into all sorts of things. (To Mr. Isaacs): I rule you cannot put to this witness a question as to what happened or what he heard happened at that meeting.

Mr. ISAACS.—If you lordship says that, I quite understand the ruling, and it is unnecessary for me to formulate it more formally.

His LORDSHIP (to the witness).—You were not at the dinner?—No.

Mr. HORRIDGE asked his lordship to repeat his ruling.

His LORDSHIP.—I rule that the witness cannot be asked as to what he heard had happened at the Licensed Victuallers' dinner, in November, 1905. The date is important.

Mr. ISAACS.—Of course.

His LORDSHIP.—If it had been before it might have been a different question.

Mr. ISAACS.—My point is that it is important only because it happened afterwards, when they got the benefit of the small levy. However, I don't propose to go further into detail. I understand your lordship has formed a definite view.

His LORDSHIP.—I have not formed a definite view.

Mr. ISAACS.—I thought your lordship had.

His LORDSHIP.—Upon what?

Mr. ISAACS.—Upon this point.

His LORDSHIP.—Oh, upon this point, yes.

RE-EXAMINATION OF MR. MORRIS P. JONES.

Mr. TAYLOR.—As to the inspection of these houses, you say you take the view that you were not, as a member of the Committee, obliged to inspect?—No; I thought not.

And the question as to whether you should or not was discussed between you and Mr. Sanders at an earlier period?—No; I raised it in the Committee myself.

And expressed the view which you have expressed in cross-examination?—Yes.

Then in all cases you heard the evidence before you?—Certainly.

Now one question about the first topic you were cross-examined upon. Mr. Isaacs asked you whether you were selected to form a band of Conservatives. Did you go upon that Bench with the view of acting as a Conservative or one of the Conservative band?—I went on with a view altogether apart from party politics, with the view of not acting in connection with party politics, but of acting judicially—without fear, favour, or affection.

ALDERMAN WILLIAM OULTON'S EVIDENCE.

Alderman WILLIAM OULTON was the next witness called, and was examined by Mr. W. H. S. Oulton. He said he was a sack contractor and shipowner, had been a magistrate since 1880, had been an alderman for many years, and was chairman of the Education Committee. He did not take part in all the meetings of the Licensing Committee or in some of the inspections of houses proposed to be extinguished.

In the discussions which arose as to the houses to be scheduled for extinction you took a modest view, a view consistent with your view as a magistrate?—I had no other view, either in connection with that or any other business that came before us. I am obliged to say, if I may, I should esteem it very dishonourable and very weak if I could not dissociate my mind from anything that was not germane to anything that came before me as a magistrate.

Mr. ISAACS (to Mr. W. H. S. Oulton).—You ought to keep the witness in order (laughter).

Mr. W. H. S. OULTON.—As to the levy for compensation, you voted for an amount which in your opinion was a reasonable one?—Certainly.

Arriving at the conclusion from the figures before you?—Yes.

And in giving your vote you were not animated by a desire to assist the brewers?—No.

Is it true that you did "not desire to diminish the number of licences, and to hamper and obstruct" the administration of the Act?—That is not true.

ALDERMAN OULTON CROSS-EXAMINED.

Mr. ISAACS.—You have known Sir Edward Russell a long time?—I have.

I think you are personal friends?—We are.

Have been for many years?—That is so.

Do you know him as a high-minded, honourable man?—Certainly.

Do you know that he has taken a very prominent part in seeking to effect reforms in Liverpool to a great extent by means of the reduction of the number of licensed houses?—Yes.

His view has always been that for the benefit of the community of Liverpool it was desirable that there should be fewer public-houses as compared with the number of inhabitants?—That was his view, I believe, as it was mine.

I am glad to hear it was yours. Then, according to your view, it was necessary to reduce the number of licensed houses as far as you could?—As far as I could. You mean as far as I was justified in doing as a magistrate.

Mr. ISAACS.—Certainly.

So that you had the power, as you knew, to levy the full sum, which would have given you something like £37,000 with which to compensate the persons interested in the houses of which the licences were to be extinguished?—Yes.

And, of course, by only levying half, you could only compensate, and therefore could only reduce, licences to that extent?—If it were done so it would have that consequence, but you are supposing the inverse of the course that I took.

But, of course, that would have been the consequence. Now, let me point out to you what happened. Did you attend the inspections?—Some of them. They gave me a very bad cold, and I had to go away.

I am very sorry to hear that. You have recovered from it now. I see you did not attend the Licensing Committee after the 9th of February?—I am not quite sure as to the date. I know the point in the business where I was obliged to leave, and that was after we had come to the general conclusion, which was embodied in the report which was submitted to the full bench of magistrates.

Do you say you were present at the meeting at which the draft report was before the meeting?—No, no.

His LORDSHIP.—He means the meeting of January 31.

Mr. ISAACS.—But, Mr. Oulton, I think that was covered by my question. I asked whether you attended any meeting after the 9th of February?

Witness.—No, I think not.

Am I not right in this—that from the 9th of February onward, for some time at least, you did not attend?—I did not attend until I returned from abroad, and that, I think, was on April 23 or 26.

Do you mean that you attended then?—I attended, I think, the first meeting that I possibly could, and one of the first businesses I attended to on my return was to ascertain everything that had been done by the Licensing Committee and get all my figures; and that was why I thought myself competent to give an opinion on the levy.

You inquired what had been taking place in your absence?—Well, I had the documents, epitomes, and so on.

Mr. ISAACS.—Whatever the reason was, am I not right in this, that you attended no meeting from the 9th of February until the 12th of July?

Witness.—I really cannot speak as to exact dates. Is it so because I do not wish to say I attended a meeting which I did not?

Mr. ISAACS.—I am sure you do not. I am trying to call your attention to the fact

Witness.—I know I was absent from a great number of meetings.

His LORDSHIP.—I have got nothing in my epitome between 22nd March and 30th May.

Witness.—I never attended any meetings between.

Mr. ISAACS.—According to this document, the epitome of proceedings, you did not attend any meetings from the 9th February until 12th July?—I can't say whether I attended any meeting prior to the 12th July.

Mr. ISAACS.—There is certainly no notice of any attendance in any of the documents before me.

His LORDSHIP.—Have you got the original note of the 12th July?

Mr. SANDERS (magistrates' clerk).—I have sent for it.

His LORDSHIP.—There may have been meetings in between.

Mr. ISAACS.—What I ask, and what my lord wants to know, is whether there were any meetings besides the preliminary meetings on the 30th and 31st May and the 1st June between the 22nd March and the 12th July.

Mr. SANDERS (handing a document to his lordship).—There were meetings of the Committee, but they were doing other business, and not business under the Licensing Act.

Witness.—I was present on July 12, but I don't think I was present at any meeting between that and the 9th of February.

His LORDSHIP.—I don't see that he was present at any meetings between the dates mentioned. (Reading the document.) He was present at the Transfer Sessions of the justices on June 8.

Mr. ISAACS.—That is why it is not in the document before us, I suppose. It comes to what I was putting. I think we are agreed about it.

His LORDSHIP.—He was present on July 4.

Mr. ISAACS.—That has nothing to do with these matters.

His LORDSHIP.—It was only that at that meeting it was resolved that July 12 should be the date of the meeting of the Committee. There were applications for certificates of reduction. Fourth of July, Licensing Committee again. On July 4 the minutes of the meeting of the Committee held on May 30 and 31 and June 1 were read, and it was resolved that a meeting of the Committee be held on Wednesday, July 12, and 2-30, for the purpose of fixing the scale of charges to form a compensation fund for 1905. Then, procedure in compensation cases. But there is nothing of any importance.

Mr. ISAACS.—I presume not, because we have got the epitomes.

His LORDSHIP.—It would not be correct to say he attended no meetings, because I see his name down on two occasions, at all events.

Mr. ISAACS.—He attended no meetings dealing with this question.

His LORDSHIP.—It was discussed on the 4th of July, but nothing was done.

Mr. ISAACS (to witness).—With the exceptions, whatever they may be, which my lord may have found in the book which has been looked at, it does appear that you did not attend from the 9th of February?—Yes.

You agree, do you not, that a reduction of houses is "sorely needed" in Liverpool?—Yes, I do.

You know, do you not, that nearly every judge who has come to assizes in this part of the world has made observations to that effect?—Yes.

Mr. TAYLOR.—My learned friend might give me some authority for that.

Mr. ISAACS.—I can give you the authority of many, from Lord Russell of Killowen onwards.

His LORDSHIP.—That is going rather wide, isn't it? If they did not make the observations, I have no doubt they ought to have done (laughter).

Mr. ISAACS.—And therefore we may assume they ought to have done (laughter).

RE-EXAMINATION OF ALDERMAN OULTON.

Mr. TAYLOR.—Tell me about this: You were not at these meetings, but did you get the epitomes of the meetings which took place when you were not present?—Yes.

All of them?—Yes.

And had you received these before you attended the meeting of July 12?—I had.

And many others?—Yes.

My friend asked you a question about the effect of the half-levy on the reduction of licences, and you gave an answer in which you used the words, "Inverse order." Will you explain what you mean by that?

Witness.—The method that suggested itself to my mind—and this was my own idea—sufficient credit has not been allowed to the magistrates for their own personality. My view was this, and, as far as I know, the view of no one else. My view was that we ought not to make the levy until we had decided what houses we should remove from the list of licences. I had to consider it. I came to the conclusion simply on the ground that it was not right to make the levy until we had decided what was the number of the licences which should be cancelled. On that point we were unanimous; there was no friction in regard to the course we ought to pursue. I was surprised myself, after this unanimity, that at the meeting of July 12 there was so much friction engendered. We had previously been unanimous as to the policy, and the Bench had approved of our suggestions, one of which was that we should not resort to a loan, while another was that we should not fix the compensation until we had decided what licences were to be cancelled.

His LORDSHIP.—All that remained on July 12, then, was to vote a sufficient levy?—Certainly.

MR. F. W. FRODSHAM'S EVIDENCE.

FREDERICK WILLIAM FRODSHAM, solicitor, was the next witness.

Mr. SMITH.—You are a solicitor, and member of the firm of Payne, Frodsham, and Bewley?—Yes.

How many years have you been in practice?—Twenty-two.

And how long a justice of the peace?—Only last year. November last.

Without troubling with matters anterior to the meeting of July 12th, and coming to that meeting, will you tell the jury whether you applied your honest judgment as to the question of the necessary amount of money required for the levy?—Certainly I did.

And in your judgment was anything else before the Committee except the amount of money?—There was other formal business, but no relation to this matter. The principal business was confined to the question of the amount of the levy. The minutes show the other things.

Did you give an honest vote about the levy?—I did.

Is there any truth in the suggestion that you desired to hamper and obstruct this striving to effect a sorely-needed reduction in the licensed houses of Liverpool?—Absolutely none.

Is there any truth in the statement that you were there not to do justice but as a friend, almost as a representative of the trade?—Absolutely untrue.

There have been other suggestions made about your intervention in the case. But your firm is well known to both your friends and opponents?—Yes, the firm has been established since 1835.

Is there the very slightest ground for the suggestion that you assisted the case in order that your firm might make fees out of it?—Never, never.

His LORDSHIP.—I don't think that suggestion was made.

Mr. ISAACS.—I never made the suggestion.

Mr. SMITH.—I certainly understood so. If not, I apologise to my friend. (To witness:) At any rate, whatever the result of this litigation might be, you personally would be a loser?—To a very considerable extent. Probably a couple of hundred pounds out of my own pocket.

Whatever the result?—Whatever the result.

And is it a fact, Mr. Frodsham, that you were in any way influenced in the advice you gave these other gentlemen by the circumstance that you were acting as a solicitor?—I don't admit

that I gave advice. What I did was to obtain for them the opinion of competent counsel, and to read that opinion to them. I did not advise them. I simply read the opinion of counsel.

Mr. SMITH.—I am perfectly willing, as far as I am concerned, to take any responsibility; but, confining myself to your connection with the case, did you desire to act as solicitor for them?—Quite the contrary.

Did you indicate your wish that they should consult someone else?—I told them I would infinitely prefer that some other solicitor should be consulted.

What was the reason you were overborne by the majority of your fellow-members?

His LORDSHIP.—No, no.

Mr. SMITH.—If your lordship pleases.

CROSS-EXAMINATION OF MR. F. W. FRODSHAM.

Mr. ISAACS.—If I understand correctly what my friend has been putting to you, some members came to you?—I don't say they came to me. I met them. I generally meet them.

In the club?—Yes, in the club (laughter). We are all members of the same club.

Give me the name of it.—The Conservative Club.

Mr. ISAACS.—Oh (laughter)!

Witness.—I was at the time the chairman of the club.

I see. Then you went to the club in the ordinary way, and there it was discussed. Is that how it came about?—There were one or two of us met casually, as we ordinarily do, and the subject of this article no doubt formed a matter of discussion.

Yes. There was a meeting called?—Mr. Isaac Morris considered the matter so serious that he thought it advisable a meeting should be held, and he called a meeting at his own office, which I attended.

And who else attended?—Speaking off the book, I should say all the eight who were in line. I will not tie myself. There may have been one gentleman absent.

His LORDSHIP.—You are speaking of the 14th July?

Witness.—Yes, the 14th or 15th July.

Mr. ISAACS.—Mr. Frodsham, you have had had a considerable experience apparently of politics if you are the chairman of the Conservative Club?—In a minor way, perhaps, I have.

But the chairman of the Conservative Club may be able to wield a very considerable influence, eh?—I don't think so.

I suppose that was why they appointed you?—I don't think it necessarily follows. I have been on the Committee for about twelve years, and I suppose they thought my turn had come to be moved up.

And that you were worthy?—That is for them to judge.

I suppose in your experience of life you have heard of such a thing as political bias?—I have, certainly.

And I suppose you have heard that such a thing may exist even in the Conservative camp?—In the Conservative camp?

Well, in the Conservative party?—In the Conservative camp outside a court of justice I should say that it would.

And I suppose you will agree with me that sometimes there is a tendency on the part of members of the same party to come to the same conclusion?—Well, are you referring particularly to the Licensing Act?

I am speaking generally?—I dare say on many questions they are in agreement, but on other points they differ.

To a great extent, of course, it is a question of mental attitude? —On general matters no doubt, and on matters of policy certainly, as affecting the Conservative party.

And the mental attitude in relation to politics would cover their view on a good many things?—On matters political certainly, but on matters outside I don't think so.

On matters political the Conservative party derives a considerable amount of support from the brewing interest?—And so do the Radicals.

In Liverpool?—Yes. They have got Radical members in the Council.

Do you say they get a considerable amount of support from the brewing interest?—I don't say in Liverpool particularly.

Mr. ISAACS.—I thought you would not.

His LORDSHIP at this point made a remark which was inaudible.

Mr. ISAACS (alertly).—I beg your pardon.

His LORDSHIP.—Well, I am trying to shorten the proceedings, but I won't say anything.

Mr. ISAACS (to Mr. Frodsham).—Do you deny that the Conservative party in Liverpool derives considerable support from the brewing interest?—What support do you mean?

His LORDSHIP.—Voting support.

Mr. ISAACS.—Voting and political support?—I certainly think they do.

If the brewers and their friends voted the other way it would make a considerable difference?—I don't know their numerical strength.

Generally speaking, the Conservatives in Liverpool are looked upon as the friends of the brewers?—I don't think they are. There are not more than a dozen brewers—certainly not more than twenty brewers in Liverpool.

But they are large ones. And when I speak of brewers I mean licensed victuallers?—I don't know their political complexion.

Mr. Frodsham, do you say so?—I don't know a single licensed victualler.

Mr. ISAACS.—Neither do I, but I know their politics.

Mr. FRODSHAM.—Then why not say so?

Mr. ISAACS.—But my evidence would not be accepted. If you will take my statement I will give it.

Mr. FRODSHAM.—I don't know their politics of my own knowledge.

But it is alleged?—I have often heard it alleged, and a great many other things I have heard alleged, but they are not true.

You say it is not true that the brewers support the Conservative party?—I believe in my own knowledge that they do support the Conservative party, and I agree there is good reason why they do.

Mr. ISAACS.—I entirely agree with you, Mr. Frodsham (laughter).

Mr. TAYLOR.—I have several other gentlemen here, and they can only say exactly what has been already submitted; and if my friend does not wish, I will not call them.

Mr. ISAACS.—I don't want them called. I desire to do something of the same kind.

Mr. TAYLOR.—That is the case for the prosecution.

IMPORTANT LEGAL POINT.

Mr. RUFUS ISAACS said that before addressing the jury he would like to call attention to a point in the indictment. He divided the innuendo into two parts: the first was the allegation of dishonesty and corrupt motives, and the second dealt with other matters. The question whether the article meant that these gentlemen were guilty of dishonest or corrupt motives was a question of fact for the jury. With regard to the rest, supposing the jury took the view that the article did not impute dishonest or corrupt motives, he submitted that the whole indictment would fail.

His LORDSHIP.—If you were dealing with it as an ordinary pleading, it would be clearly otherwise.

Mr. ISAACS.—I agree.

His LORDSHIP.—Have you got any authority to show in a proceeding of this kind, when you have pleadings, that it ought to be dealt with in any other way than in the way of a statement of claim?

Mr. ISAACS.—No. But I take this point with regard to it, that there is no authority which says that it ought to be dealt with as a statement of claim and defence in a civil action. My submission is that exactly the same law applies to this case as applies to the ordinary criminal proceeding.

His LORDSHIP.—An ordinary criminal proceeding in which the magistrates commit for trial and the grand jury return a true bill?

Mr. ISAACS.—Yes. Assuming that you are dealing with an indictment, my submission is that if you come to the conclusion that the view that I was putting forward just now would be right in an ordinary case, exactly the same thing would apply to this case, notwithstanding that it is by way of a criminal information.

His LORDSHIP.—Will you show me the authorities on the point that where a special innuendo is alleged, and where you are entitled to fall back on the natural meaning, just as in the old days, when it was practically considered to be two counts—one with the innuendo and the other without? I shall be glad if you can show any authority how that is to be dealt with in a criminal case.

Mr. ISAACS.—Yes, my lord; I will deal with it. I only wanted to refer to the point now so that we may be protected hereafter in connection with it.

His LORDSHIP.—I think you had better take the point later, and show me authority; because if you are right on that point I should have to direct the jury differently.

Mr. ISAACS.—Your lordship is bearing in mind that I have raised the point in view of the possibility that I may have to raise it hereafter in another court? I submit that the ordinary course in a criminal case would be better followed, and take an actual general verdict of the jury of "Guilty" or "Not guilty."

His LORDSHIP—After the evidence I should like you to recur to the point and put your authorities before me, and Mr. Taylor will put his.

Mr. ISAACS.—Yes. I am rather anxious to get through with the evidence, and, therefore, in opening my case, I shall reserve most of what I have to say until evidence has been called. I think that would be the most convenient course.

MR. ISAACS MORRIS AGAIN IN THE WITNESS BOX.

Mr. TAYLOR.—Before my friend begins, I understand Mr. Isaac Morris, who was the first principal witness called, desires to qualify the statement made by him——

Mr. MORRIS.—Correct.

Mr. TAYLOR.—Or correct, I should say.

Mr. ISAACS said he had no objection.

Mr. MORRIS.—My attention has been called to a report of a portion of my evidence where I used the word "brewers" in connection with Sir Thomas Hughes. I did not intend to say "brewers." He referred to a "brewer" as being in favour of a full levy.

MR. ISAACS' ADDRESS FOR THE DEFENCE.

Mr. ISAACS then addressed the jury for the defence. He said:—Gentlemen of the jury,—An opportunity is now afforded me of opening this case to you on behalf of Sir Edward Russell, whom I, in conjunction with my friends Mr. Horridge and Mr. Hemmerde, have the honour and privilege to represent in this court in defence of this action. I approach this case in my address to you with a very strong feeling of responsibility—a responsibility, as it appears to me, perhaps a little greater than is usually cast upon counsel in the majority of cases, for I am dealing with a charge—a criminal charge; strive to minimise it how you may by the use of other terms, it is a criminal charge, made in a criminal court—against Sir Edward Russell, one of the most distinguished, honoured, and respected of your many distinguished, honoured, and respected citizens of Liverpool. The charge made against him arises not out of any desire to put money into pocket, because nobody has suggested that. I am quite sure that the last person to have any such ideas in their minds would be any one of the eight prosecutors who have been either called or spoken of by my learned friend. But a charge remains against Sir Edward Russell which you have to deal with, and with reference to this article which he published in his paper on the 13th of July of this year. Remember this, from the very outset, that you are dealing with the position of Sir Edward Russell, not only as editor of this paper, but as one who has been a champion of reform in Liverpool in connection with the public-house and the brewing trade for a great number of years—and not only a champion, but a pioneer in the reforms, and one of the most active supporters of what was making for the purity and sweetness of this great city. I do not intend to travel into the past; in view of the admissions that have been made during the course of this case it becomes unnecessary for me to do so, except to make this one observation, that for a great number of years up to the present

moment, as Mr. Oulton, almost the last witness, admitted, there is a "sorely-needed" reduction of licences in Liverpool. It may be of some interest to you to know—and in this connection I intend to prove it—that in Liverpool there is one licensed house for every 365 inhabitants. According to the report of a great Commission which sat upon this matter, it was said that the most that there ought to be would be one public-house to every 750 inhabitants. I am speaking of Lord Peel's Commission, as it is generally termed. In Bootle there is one public-house for every 1,099 inhabitants. Now, I quote those figures to you only for the purpose of saying this—what at least cannot now be disputed in this case, and what is one of the points upon which we have been relying and are relying—that there is a "sorely-needed" reduction of licences in this city. Now, with that object in view, Sir Edward Russell set himself to work, in conjunction with a number of other distinguished gentlemen in the city, for the purpose of bringing about that reduction of licences. A great deal has been done during the last ten or fifteen years. I don't want to travel at undue length over this period, but Mr. Sanders (clerk to the Licensing Justices) made a statement yesterday in this court which was received with great surprise when it was made. In that statement he made a very great and serious error when he told us this—he said he did not know of his own knowledge—and I am not suggesting that he was saying anything but what he thought was right at the time—Mr. Sanders said he did not know it of his own knowledge, but he thought when the Vigilance Committee was established that it consisted of a number of the Licensing Justices as well as of other persons. Well, first of all, that was quite wrong; but this statement was not of so much importance as his statement that the only objections to licences made by the public, apart from the licensing authorities, was as regards eleven houses during a certain period of time. So far from that being correct, though it had a strong significance at the time, there were actually private objections to hundreds of houses. The exact number has not been given to me, and I cannot lay it, at the moment, before you; but there were hundreds of houses in which these representations were made. The importance of the figures is an indication of the state of things during those years, and which led to the passing of the Licensing Act of 1904, with which we have really to deal in this case. But in order that you should understand what happened it is desirable for you to have these facts brought to your notice, and several other facts in connection with licensing law, which will not make it necessary for me to refer to the sections of the Act of Parliament, which I can put to you in a few sentences, and if I am wrong in my law his lordship will correct me. The position before 1904—you will forgive me for going into this, but it is impossible to understand this case unless you do—the position was that for several years there had been a great agitation in many cities—more especially in

Liverpool—to reduce the number of licences, a necessity which had been stated by several judges and is so well known that it is not necessary for me to refer at length to what is a well-established fact, the reduction of crime in any locality synchronising with the number of public-houses removed from any locality. Further, if you reduce the number of houses you are reducing intemperance—and that is the whole point of the agitation—you are reducing the excessive drinking which unfortunately takes place, without desire to interefere with those persons who want moderate refreshment. If you do that you are sweetening the life of the community, and affecting it morally and financially, because you reduce the crime within the area in the same proportion to the houses reduced. Then there came this state of things in the licensing law: that throughout the country—I feel sure it is as well known to you as it is to me—a great number of magistrates throughout the country set to work to reduce the number of houses in the various districts in their own areas. And then a great agitation was raised about it, into the merits of which I do not propose to enter, because it would be outside legitimate discussion, as to whether they were entitled to extinguish licences in respect of houses which had not been made the subject of complaint. Speaking generally, and taking a broad view, that was the position. It was said you must not extinguish merely because you think there are too many houses in the locality; and that the magistrates had not the power. There was a great deal of discussion, agitation, and litigation, and it led to the Farnham case, with which I need not trouble you. But it resulted eventually in the Licensing Act of 1904 being passed. It made two great changes; one in the transference from the magistrates to Quarter Sessions of the power of licensing, and, another, that it imposed or gave the right to the magistrates to levy compensation from every licensed house within the district upon the broad principle that those houses which survived were to pay the proportion upon the value, because by extinguishing the other licences within the district they would get the benefit to some extent of the trade distributed over the rest of the area. That was the broad principle. That was the view held by the vast majority of the people of the country. Compensation must be granted, then they have the right to levy compensation, and there is an obligation to pay up to the person interested, the owner or otherwise, in the licence when that licence is extinguished by order of the justices. Then, of course, you can only extinguish such a number as you can levy compensation to pay for. In other words, supposing your district made a levy of £10,000 under the schedule figures of the Act as the maximum amount during twelve months, then you can extinguish licences to the extent that the £10,000 will enable you to go. In other words, you may buy with that £10,000 the extinction of licences to the value of £10,000 calculated upon this basis. If you only levy £5,000—half your maximum—you can only extinguish to the extent of £5,000, and,

notwithstanding that you may think it necessary to reduce the number of licences and to reduce them as rapidly as possible—however much you may have that view—if the justices have only levied half the rate—that is, the £5,000 in the case I have put to you—then, however much it may be desired by some to reduce or extinguish other licences beyond what can be paid for by the £5,000, they are quite powerless; they cannot do it. And, therefore, there is a beneficent power given in the one way of awarding compensation and enabling the justices to extinguish the licences and compensate the persons on their loss for the benefit of the community. There is, at the same time, a curbing of the power of the magistrates, a restriction upon their power, by the Legislature saying: "You cannot now, after the passing of this Act, extinguish a licence without paying compensation." That is the position. In other words, they were obliged to cut their coat according to their cloth, and dependent upon the compensation to be paid was the number of licences which could be extinguished during the year. That was the position of matters brought about by the passing of the Act. In Liverpool, of course, it was a very important matter. As you know far better than I do—you can only read of these things in the public papers—it had been a matter which had agitated the public mind for a number of years, and consequently when this new Act was passed it became very important, and I think you will agree with me in this—whatever other views you may hold as to what observations I have already made or am about to make—that it was highly desirable, supremely desirable, that this Act should be worked to the full extent of the power which it conferred upon the Licensing Justices for the benefit of the community—consistently also with regard to the due interests of the private persons whose interests were to be affected by the extinction of the licences. Whatever other view may be taken of it, I conceive no one can dispute that that is the sound proposition upon which this Act ought to have been administered and should be administered. Now, when we come to deal with the question of what took place with reference to Liverpool, a series of significant facts stand out in bold relief—not, gentlemen, upon evidence which I am about to call, but upon the admissions which have been extracted—sometimes under some difficulty—from the witnesses who have been called by my learned friend in support of the case which is made by the prosecutors. Now, I should be content in an ordinary case—were it not for the position that Sir Edward Russell holds, and for the fact that this matter is of such interest to the city at large—I should be content to take my stand upon the admissions which have been so reluctantly given by some of the witnesses which have been called by my learned friend. When I come to deal with the facts of this case, the admissions they have made on the material parts of the case, I shall submit to you for your judgment that we have established the main proposition of this allegation by Sir Edward Russell up to the hilt. I shall not

be content with that course. I purpose to take another, even though, much as I regret, your time may be occupied a little longer by my so doing. I propose to call Sir Edward Russell and other gentlemen, who will give you evidence upon this point, and they will expose themselves to the cross-examination of my learned friend, so that he may elicit from them anything that may assist the case he is making. But when we come to deal with the Act, am I not right in this—that, first, it must have been everybody's desire, or should be everybody's desire, that this Act should be equitably administered, and that there should be no predominance—certainly no premeditated, prearranged predominance, of one political party over the other in the Committee which was to sit for the purpose of licensing, and which properly had no connection whatever with the Conservative Club, either with the chairman of the Conservative Club or with the various members who were invited or selected to form one phalanx of nine, who were to give their undivided support to what has turned out, at any rate, to be the interests of the brewing trade. I do say that it is eminently to be regretted that the course was taken which Mr. Isaac Morris had to admit to you yesterday. I do say, further, that the proper course to be taken was the course which Sir Edward Russell, in the "Liverpool Daily Post and Mercury," indicated in the article of the 5th December, 1904. I read that article, and I do not want to take up your time by reading it again; but you will remember that the article in substance was directed to this—to putting forward a very calm, sensible, level-headed view of the situation, and, above all, as it appears to me—one or two passages that I will read to you—seeking to derive no political capital as to what was to be done, but only being desirous that both great political parties should conform in the one desire to administer this Act for the benefit of the community, without regard to what their positions were. That was Sir Edward Russell's view; the view that he advocated, and which apparently was rejected contemptuously by some—because I certainly mean to qualify any observations I am forced to make in this case—of the members of the Conservative party. Nothing could be more unpleasant than to have to discuss questions of party politics in a court of justice. I agree, and felt before even my lord had put the question to me, that it was desirable, as far as one could, to keep politics out of the considerations of the jury. But how on earth was I, for Sir Edward Russell, to keep politics out when the attack that he was making was an attack upon those who were as a political party predominant on the Licensing Committee, and with regard to whose acts he was making an attack in the article of July 13? Of course, it was impossible. The most important part of the case would have been wanting if I had not persisted in my determination that the view should be brought forward to you as to what the political complexion was of the Licensing Committee, and, further, to make plain what the political views were of the majority of the Licensing Justices of the

city. Now, I would desire to make this remark as a preface to some observations which I shall feel bound to make upon this point. I do believe—and, indeed, from the evidence that we have, we are entitled to believe, even if we did not know it otherwise—that there are many high-minded members of the Conservative party who would be just as anxious as members of the opposite party are that they should not be taking part in, politically or as a party organization, matters of this description, and more particularly who regret that one great political party in the country has, at any rate in the views of a vast number of people, become associated, and closely associated, with what I may call compendiously the liquor interest throughout the country. And that these observations apply more particularly to the city of Liverpool is in substance admitted by what the last witness has said. I say there are a great many Conservatives who regret that this is the position. I may take as an instance one who has played a part which, if I may be permitted to say so, redounds infinitely to his credit throughout the whole of this history. I mean the part played by Sir Thomas Hughes, himself a Conservative, but, nevertheless, realising that, however strong his political views may be, they had no part or place in this question, and that they could not in any way counteract or affect his great desire to reduce the number of licences in this city so as to make for the greater purity of the life of this city. Sir Thomas Hughes has taken a very prominent part throughout, and he is one of the type of Conservatives who has set himself, notwithstanding his party views, against the system engineered in this case, apparently, by Mr. Isaac Morris for the purpose of getting his solid majority on which he could always count. Just see what happened. You have a body of Licensing Justices, consisting on the 1st of January, 1905, of 152. Now, I purposely have not inquired more closely, because all I wanted was—what must have been self-evident—the admission that certainly there was a considerable majority of the Licensing Justices who held views associated with the Conservative party in politics. Now, of course, I am not suggesting that because they hold these views therefore they were in any sense to be looked upon as gentlemen who were not fit to be justices or to deal with these matters. What I say is that it is because they were a vast majority—or a considerable majority—of the Justices for the city of Liverpool that Mr. Isaac Morris claimed to get a predominance on the Licensing Committee, which was an effective committee, so that in that way he might have in his hands the effective control of the administration of the licensing throughout the whole of the district. I defy anybody in court who has heard the evidence of Mr. Morris to deny that that is a true and fair statement of the case; I defy anyone who has listened to the evidence that has been given to come to any other conclusion. I am not saying, and I don't think I am saying, that because of that, and because holding those views that it necessarily follows, or, indeed, that it followed at all in this case, that they

were guilty of any dishonest conduct or of any corrupt conduct or motives in connection with what they did. At the early outset of this case I took the liberty of correcting a most extraordinary error—because, I am sure, it must have been an error—on the part of my friend Mr. F. E. Smith, who opened what we lawyers call the pleadings in this case. He gave you the story in some detail, properly, for the purpose of indicating to you the point to be tried, but he left out of what he was telling you were the pleas in this case a plea which must be of great importance, which was put upon the record of this court, and which shows, in terms which I have read once, and don't want to read again—that Sir Edward Russell does not impute, according to his view did not impute, and never intended to impute, any dishonourable conduct or corrupt conduct, or anything that attacks their personal integrity as distinguished from the public view which they had advocated—the personal integrity of any of the gentlemen which have been called. Strangely enough, I say, that was left out of the story that was told, but, of course, I indicated to you that there was a disclaimer by Sir Edward Russell, and at a later stage of the case I had admissions from various witnesses that again at an early stage of these proceedings Sir Edward Russell had not only said, but had sworn, that he had never intended to impute any dishonourable conduct to any one of these gentlemen. And not only have I that; I have something which I won't say is of more importance—because I am certain all the prosecutors agree in this, that nothing could be more important than a statement on oath by Sir Edward Russell—but I have a statement by Sir Charles Petrie, who yesterday, in the box, admitted to you what I submit was the most pregnant and significant admission which could be extracted from a prosecutor in a case of this kind. That was the admission that he himself, when he read the article, did not read it as an attack upon himself, or as an imputation of corrupt, dishonest motives, or in any way an attack on him in his personal capacity. That clears away the ground considerably, because I do submit to you that I am entitled, after I have got that admission from a man like Sir Charles Petrie, with whom it is said all the other witnesses agree, to say that you have an admission that he did not look upon it as an imputation which my learned friend and his clients, who are striving to wrest so hard a verdict at your hands, and to make you believe that there was an imputation of dishonest or corrupt motives. I should have thought that if the object of these proceedings was to establish that they were not actuated by dishonest or corrupt motives as is now suggested—if that was the object of these proceedings, all I can say is that, without discussing in any greater detail one can only wonder at the fact of the proceedings having ever been instituted. I go further, I say one can only wonder at the proceedings ever having been instituted without a communication of any kind with Sir Edward Russell in this matter. One can only wonder that, after the statement which he made, and the statement which is upon the record of this court, that it was necessary to take up your time, and

to proceed with the trial of this cause, to discuss in detail, as we are obliged to do, what, indeed, not only the article meant, but what the various circumstances surrounding this transaction were. It is said, "Oh, why introduce politics into this case?" Yes, I agree, and I turn to the prosecutors responsible for it, and I say to them: "Why introduce politics into a court of justice? Why is it necessary that you should bring these proceedings, and bring them to trial before a jury when you know—as they all knew; nobody knew better than Mr. Isaac Morris, however much he may smile at it—that if this case was fought out it would mean that it was absolutely essential that we should introduce the political element into the case." Keep out politics. It is a political case, and nothing else. These gentlemen did not require—and I say it in justice to them, if they will permit me for one moment to defend them (laughter)—to set in motion this great engine of the criminal law of this country in order to crush Sir Edward Russell because of observations that he had made, which, even though exaggerated—I will assume exaggerated, even, to use the words of a great judge, Lord Esher, "grossly exaggerated"—nevertheless entitle him to comment, however mistaken his views may be, and however wrong, if you choose to assume it, his impressions may have been of what has taken place, and however "grossly exaggerated" the impressions may have been that he puts forward in his paper, he is entitled—and Heaven forfend that the day should come when a man is not entitled—to make those observations with respect to men carrying on public duties, always,I agree, provided that he does not impute to them corrupt or dishonest conduct which he cannot establish. You have heard what Sir Edward Russell has sworn, and what Sir Charles Petrie has sworn, and I am putting forward that there is no such imputation upon these eight prosecutors who have brought these proceedings. You will agree that we have really cut down the case substantially to a question of whether or not Sir Edward Russell was making a comment which he had a right to make upon a public body. I don't hesitate to say in a public court that not only was Sir Edward Russell entitled to make the observations contained in this article upon the action of these Licensing Justices in Liverpool, the predominant political party on this committee, but that he was entitled to comment upon the action of the judge upon the bench, and upon the action of all the magistrates in every court throughout the country. The days are not coming in this country when criticism of those holding public positions is to be narrowed down by the elaborate technicalities and microscopic examination of every bit of the phraseology used in this article. Long ago, in the reign of George III., this question was fought out, after a bitter controversy, with the fight for freedom in this country which was then fought between the people of the country and the judges of the country, and which led to the Act of Parliament which we lawyers know as Fox's Act. That Act established this one great principle, the fundamental principle of justice in this country—

that the question of whether an article is a libel or not is not to be decided by the judge, however strong his views may be, but the question is to be decided and left by him to the consideration and determination of the jury. That is the law of this free country, and you, gentlemen, of the jury, are called upon to administer that law. And if I satisfy you, as I hope to satisfy you, that there is not in this article any suggestion of such dishonesty or corrupt motive as my learned friend has laboured to establish, then, I submit to you, apart from everything else in the case, that Sir Edward Russell would be entitled to your verdict, because his comment was such as he was entitled to make upon public acts. Of course I am not suggesting for one moment—I should be sorry that anyone who heard my observations in this court should think I was suggesting—that any criticism of our judges, or of Ministries, or of anyone holding a great public position—that the Press or anyone else was entitled to impute dishonesty or corrupt motives. I never suggested for a moment that I would support anything which travels beyond fair criticism. But, short of that, comment may be made, and it might be very strong indeed, and I am sure it will be within the knowledge of your Lordship that judges on the bench, and not only judges—I mention judges because in this case we are dealing with Licensing Justices—but of those who are holding any high position in this country. Judges have said that not only do they not object to criticism, nor were entitled to object to it, but they invite criticism. The words I am going to use are the words of a very eminent judge. Of course the criticism should be fair, and I should be the last to suggest that that criticism could ever go so far as to suggest dishonesty or dishonest motives, unless, of course, the fact was true and could be established. Well now, gentlemen, that I think will help you to understand the view in which I am putting this case, and so that there may be no doubt, I will refer to an authority. I will only quote two or three sentences, because if I have the authority of a great judge, a very great judge, and especially known in this part of the world—the late Lord Esher—for the observations I am making with reference to the comment, I prefer to use those words of his before words of my own. The case is that of Merivale v. Carson, and Lord Esher says there:—"Nothing is more important than that fair and full latitude of discussion should be allowed to writers upon any public matter, whether it be the conduct of public men or the proceedings in courts of justice, or in Parliament, or the publication of a scheme, or a literary work. But it is always to be left to a jury to say whether the publication has gone beyond the limits of a fair comment on the subject matter discussed." That is the question to be left to the jury, and upon the answer to that question depends the answer whether the criticism is libellous or non-libellous.

His LORDSHIP.—It was a book, was it not?

Mr. ISAACS.--Yes; and the great question was whether malice was there, and whether the limits of criticism had been passed. Crompton goes on to say: "The first question is whether the article on which this action is brought is a libel or no libel; not whether it is privileged or not. It is no libel if it is within the range of fair comment—that is, if a person might fairly and bona fide write the article—otherwise it is. I am prepared to say that the meaning of fair comment is this: is it, in the opinion of the jury, beyond what any fair man, however prejudiced or however strong his judgment may be, would say in criticising a work?" It is impossible to get beyond that. Full latitude must be given to the strong opinions, and even to the prejudices, of a fair man; but there must be nothing beyond opinion and judgment. And the learned judge said: "If it is no more than fair, honest, independent, bold, even exaggerated criticism, then your verdict will be for the defendant." So that he gave them a wide limit. I think myself that even gross exaggeration would not necessarily make the criticism unfair. However wrong, however prejudiced, the criticism, all that may be within the limit. Would any fair man have said it is not the question that must be left for the jury? Now, gentlemen, that puts so admirably the view of the law which is the law of the land upon this matter that there is nothing I can say which will add strength to it; but you will observe, therefore, how strong it is, because the question is not whether you agree with the criticism; the question is not whether you take the same view as Sir Edward Russell takes of this question; the question is not whether you think that he has indulged in criticism which is exaggerated; the question is not whether you think that from the strong views which he held, and had been defending for so many years, he may have formed a prejudiced judgment. The question is whether this was an honest, bona-fide expression of opinion on his part; and it is in that connection—and I only make the observation in passing, rather for my lord than for you, gentlemen—that I thought that the bona fides of Sir Edward Russell and his views became of some importance in this case, because, in dealing with a question of fair comment the bona fides and honesty of the man criticising are of great importance; and I go so far as to say this, not only in a civil action, where damages are claimed, but a fortiori in a criminal action, where, of course, the consequences are much more severe. I did not for this purpose, and in dealing with this question of fair comment make any greater distinction in answer to a question which fell from my lord, and which I said I would deal with at the proper time— I said then, and I think now, that my lord and I were in agreement—that in a question of civil and criminal trial, and when you are dealing with fair comment alone, that there is no distinction in the principle of law to be observed. But my point is that in a civil as well as in a criminal case the bona fides and the honesty of the views held are matters of great importance. And, gentlemen, not only is that so, but I would make

one further observation upon it, which I submit for my lord's consideration, and upon which I do not quote authority because I know of no authority– but which I submit must be really—I must not say elementary, because I am not sure that my lord will agree with me, but I say it lies on the threshold of administration of our criminal law throughout the country that when a man is accused of crime there is greater elasticity in the jury in favour of the defendant than there is when you are dealing with a mere civil action.

His LORDSHIP.—Greater what?

Mr. ISAACS.—Greater elasticity, my lord, than there is in dealing with a pecuniary liability. (To the jury): If I understand the law, I should have thought there would be no doubt, and there should be no doubt, that that is so. It may be, and probably is, not a question of law at all—that it is really a question which resolves itself into one for your consideration; I am not sure that it is not the true view of it—that when you are dealing with a criminal case, particularly with a criminal libel—if you find that the article complained of, we will say for the sake of argument, is on the border line, that you will take care that your verdict will be inside the border line of what juries generally do in criminal cases. This is a criminal case, and that is the view placed by judges in all criminal prosecutions on which juries act, and which may be expressed more as a rule which is generally followed by juries and indicated by judges than of law. I now come to the facts of the case. The Committee, formed, as you have heard, for the expressed purpose of, as I submit to you upon this evidence, enabling Mr. Morris and the other eight who were invited by him to get what was eventually admitted would be the result, the effective control of licensing in this district. I propose to put to you in a few sentences, and I will not do more in opening the case, what I submit is the very essence and pith of the matter which we are here discussing. You have got a large, powerful, very wealthy interest in this country, which I may describe for convenience as the liquor interest, carrying with it, of course, brewers, publicans, and various other persons interested in the liquor trade. I am not, by one word I am saying, or am going to say, intending to attack, or am attacking, that large interest. I quite recognise what their position is, and I quite realise that a trade that is legalised is entitled to carry on so long as it is carried on properly. What I say here or elsewhere will not affect that position for one moment. I go further—in consequence of, no doubt, what has been the political situation during the last twenty or thirty years, to go further back, the interests of the liquor trade have become closely indentified with the Conservative party. In Liverpool it is so. The fact has been so—the fact is admitted, and, of course, cannot be gainsaid in this court—everybody knows it. That means this, that the friends of the liquor trade are the Conservative party, or all those who hold these views—of course, I don't mean

all, there is Sir Thomasr Hughes—but those who hold the views which are favourable to the liquor interest in this part of the world. You have got this, that the Conservative party are the friends and the protectors of the liquor trade. I am not saying that they are not entitled to protect; they are perfectly entitled to protect. It is a legitimate view that they should protect. I will deal with that point directly, but I am now drawing a distinction between the two parties, and the Conservative party—it does not require evidence to support it—are closely identified with, and are the friends of, "the trade." Now, you have got a Licensing Committee to be formed which is to administer the law with relation to licences throughout your city. I suppose it must be of the utmost importance that you should not have brought into connection with this question men who are holding strong political, and who are chosen because of their strong political, views to administer the licensing law. When you come to apply that principle you find—dealing, as I hope I am doing, perfectly fairly with the evidence which has been given by the prosecutors, not seeking to extend it beyond what is legitimate, but getting from it, as I am entitled to do, such admissions as fair-minded men will think were made by the witnesses, you have this result, that from the very outset it was determined by the Conservative party—no, I won't say that, but by Mr. Morris as the leader apparently of one section—that it was emiently desirable for their friends who gave them their votes at elections, and for the party which depended on their votes at elections, that the Conservatives should have a majority of the Licensing Committee, which was to sit and administer the Act. Not only that, but even the number of the majority—that is to say the number in which they were to predominate over the others—was the subject, apparently, of discussion, and had, perforce, in consequence of the situation at that time, to be even matter of negotiation, by which Mr. Henderson, who represented the other party and the other view, was seeking, so far as he could, to minimise the political aspect of the matter in so far as it should affect the Licensing Committee. There was Mr. Morris, who took the view, which men have taken before—and it is not for a moment suggested that he was acting in any way dishonestly or with any conscious unfairness when he came to that conclusion—that it was eminently desirable that the hand of the party should be kept over the affairs of licensing. He then goes to work at the Conservative Club. Mark what happens. He first of all says: The Licensing Justices are mostly Conservative; therefore I am entitled to get from the Conservatives a majority of members of the Licensing Committee. That is the whole train of reasoning. "Therefore I say to you, Mr. Henderson, not only must I have a majority, but I am entitled to have ten out of the sixteen that are to be elected." That is the arrangement which Mr. Morris was willing to make, and which, of course, under the circumstances, had to be acquiesced in by Mr. Henderson—which, at any rate, was acquiesced in by him as getting the fullest benefit he could get out of the

situation, by getting six out of the sixteen. Therefore Mr. Morris wends his way apparently to the Conservative Club, and he looks out for a number of Conservatives prominent in the Conservative world who will assist him, and who will go on this committee, but who, so far as I have heard, have no special qualification for sitting on this particular committee. He did not go, and it is not suggested that he did, to those who had knowledge of licensing, and who were, therefore, the best people to be on the committee; but we know certainly from a number of them that they had no knowledge of licensing, no experience of licensing; that they had taken no part in the work of licensing; that it was novel work for them. Indeed, one gentleman, whose evidence consisted for the most part of the words "'Probably,' 'Most probably,' and 'Possibly,' admitted that part of the work was distasteful to him—going round examining the houses. But this body was got together. Now, I will put a question to you, gentlemen, to answer to yourselves, of course—Why did Mr. Morris go to the Conservative Club to find eight men or nine men who were to act with him? Why did he not go into the streets, amongst his friends? Some of them may be Liberals—I have no doubt he has some Liberal friends—and some who may be described as nondescripts in politics—some men who do not take a prominent part in imperial politics, but devote themselves to municipal life. Why did he not go to these gentlemen and extend a courteous invitation to them? I suggest the answer to you again for your consideration or adoption if you think facts warrant it. The answer is, because he wanted a number of men who would act with him and loyally support him as members of the party to which he belonged—loyally support the views which he was there putting forward, honestly, I have no doubt, thinking that it was desirable to protect the brewing trade, honestly thinking that the liquor trade required friends; and he and his solid phalanx of eight going up with him would be the friends and protectors in the sense in which I have described. That is, I submit, the reason actuating his act in going to the Conservative Club and preferring this invitation. Gentlemen, will you look a little further ahead, and see whether the subsequent acts warrant the observations I have been making? I think that they warrant them in this way, to this extent, beyond controversy, that no one suggests, no one could suggest, that the eight gentlemen always act loyally with the nine, that the solid body of nine gentlemen carry always what they wanted to do, having the effective control and using it in divisions where necessary. The only qualification that was made on that was a qualification in one sense legitimate, but quite unnecessary. They said, "Oh, but not when we were unanimous." Nobody suggested that they did. I was dealing with the divisions, and it is only then that we come to the question of whether or not they were to act according to their party views. The "dominant party on the Licensing Committee" are the words used in the article. Have not I proved that they were the dominant party? Not only that, but really, if one wanted to make the picture

complete, and perhaps it is a pity, for, certainly, the sake of the love of the picturesque, that we should omit from our consideration and from conjuring up before our eyes the picture of the independent and impartial, in the sense of not actuated or in any way controlled by party motives or views as the prosecutors have told you, of a sitting of the Licensing Committee. You might almost fancy yourself taking part in proceedings in a miniature House of Commons. On the one side of the oval table (laughter), but, at any rate, all grouped together and sitting together, metaphorically, probably not physically, hand-in-hand, arm-in-arm, were the body of nine led—and, I have no doubt, ably led—by Mr. Isaac Morris in favour of the views which he advocated, and was so desirous of seeing advocated. There, on the other side, separated from them, perhaps fortunately, by the table, sat the rest, who did not belong to that party. Mr. Morris suggests that one of them did not belong to what is generally known as the "other party," but whether it was so or not the majority did, I quite agree. There they sat on their side, and in the chair, fortunately, sat Sir Thomas Hughes—whether as the Speaker of the miniature House of Commons, or whether as the president of the meeting or the society, or whether as the gentleman who sits on the cross-benches and does not let you know which way he is going to vote on any division, is perhaps a matter with reference to which it is not necessary that I should say anything, because I am quite convinced, and the evidence establishes this conclusively, that whatever Sir Thomas Hughes's political views were, he always subordinated those political views absolutely in the interests, as he thought, of the community. He never allowed them to weigh with him, and voted generally with the minority in this matter, and more particularly voted with them on the crucial day which we have to discuss, this 12th of July. His view is certainly a most important view, the view of a man, certainly, who does not require from me any words of commendation, and, indeed, it would be an impertinence of me to say any such words when addressing you in Liverpool, a man who was going to deal with this matter of the levy on the 12th of July, who had prior to that date gone with some of the other Justices on the various tours of inspection throughout the city for the purpose of seeing what the condition of the houses was, and how many of them were to be reported, and how many extinguished. He is always apparently in the minority, but when it comes to the question of reduction his views go further, undoubtedly a great deal further, than the views of the solid body of nine. We find this, that Sir Thomas Hughes, indeed, at an early stage is taking a view in reproof of one at least of the members of the solid body of nine, whose name, I think, did not transpire, and it is not necessary that it should. That was the view which was put before them before they went to examine and to determine the number of houses—that what they ought to do was to determine the levy. That meant, of course, this: "First of all, let us see how much we are going to raise, and then let us see how

much work we can do for the purifying of the city." Now, that was quite wrong under the Act, and it was wrong, too, certainly, under the resolution of the Licensing Justices of January 31, because under that resolution they had already determined that, first, a report should be made, and, secondly, the levy should be fixed by the number of houses reported. He found it necessary to reprove them, or, to use a more correct or more neutral expression, to remind them of the course proposed. Now, from my own point of view, the lower the levy that was imposed the better for the liquor interest. In ordinary language, it means this—that the less money you take from their pockets under this Act, the better it is for those who have to pay the money. Certainly, generally speaking, that is a self-evident proposition, though it may be the case that the interest required is worth the money which is being paid. But I need not discuss that aspect of the transaction, for, notwithstanding the observation which fell from Mr. Isaac Morris yesterday, I can satisfy you on the question. It may be that I am not concerned with discussing whether one brewer may have thought it better that the whole amount should be levied; but I am going to refer for a moment to what Mr. Morris said. Mr. Morris to-day has asked to make a correction in his evidence, and I have accepted from him that correction. The correction which Mr. Morris has made in his evidence makes it unnecessary for me to call evidence to rebut his previous statement, and it puts our case on a totally different footing as regards that point from what it was on yesterday when the court adjourned. You will remember that when I was cross-examining Mr. Morris there was some delicacy in the expressions which he used in answer to me, which delicacy I could not quite understand, and I found it might be necessary to examine more closely into the delicacy of Mr. Morris's mind. Mr. Morris would not give me the reasons for his delicacy of mind, but he subsequently gave it clearly enough in answer to my learned friend, Mr. Taylor, when he said that the brewing interest desired that the maximum compensation rate should be levied in every year. You will remember, I am quite sure, that this was a somewhat startling proposition. Indeed, I have no doubt that it surprised you, and I was suggesting that it must surprise all who have any knowledge of the working of this Act, or of the liquor trade upon this point. Now, Mr. Morris to-day has told us further what took place, and the correction is all significant, because his correction absolutely and entirely displaces what he said. The correction which Mr. Morris thought fit to make, properly to make—one finds that sometimes a man when being examined in the witness-box, particularly if being examined by his own counsel, is apt to go a little further than the circumstances warrant—and hence Mr. Morris has come to the conclusion that he ought to withdraw this statement, and he has withdrawn it. He now tells you that it was because one brewer had said he was in favour of the maximum that he thought it was

good for the trade that the maximum should be levied. I can imagine the genial smile of derision which he would give when he heard the statement made, of course, outside the court. That is the whole position with regard to this matter. They met on the 12th July, and the whole point was this: Those who were the reformers—or may I use the phrase which I used yesterday, and which his lordship commented upon?—the progressive body (laughter), they took the view that there should be a larger number of licences extinguished. They compared it with preceding years, and said this: Of this number there were forty-seven which they wanted reduced. The exact number was, as we all know now, twenty-nine; and of the balance, eighteen, certainly with respect to four or five there was a good deal of division, and in regard to one in particular there was, where Sir Thomas Hughes took the strong view of saying that if they passed that house they would pass anything. As showing the position he was taking with them, it was to determine whether the house was a fit one. There you have an independent, impartially-minded Conservative gentleman stating his view that if the rest of the solid body, and those taking part at that meeting, passed that they would pass anything. There you get an illustration of the kind of thing going on in the Committee. That being the view, and they wanting to levy the higher rate, they go to the meeting on July 12th. There you have these men right through the meeting; in the resolutions and in the amendment you have always the eight out of the nine of the Morris body voting all one way. They were determined to levy only one-half. Mr. John Henderson was anxious, and those of his point of view were anxious, to levy the whole sum, which would have amounted to about £37,000. The point of levying the whole sum was that, because there was a sorely-needed reduction of licences—as Mr. Oulton admitted—it was necessary to have within your hands as much as you can get in the way of funds which can be levied under the Act to carry out the reforms which the Act was brought into being for. Therefore, it was said, "Levy the full amount;" and the answer that was made to it was, "No, only levy half." Then, because Sir Thomas Hughes, who acted as a sort of independent person between the two, realising what the position was, and that they were in a very small minority, at any rate in an ineffective minority—whatever the number was—sought to bring about a compromise by approximating as far as he could—if I may say so—as a reasonable man, in order, at any rate, if he could not get all the levy he wanted, to get something more than the others were willing to take as a maximum, said, as a compromise, "Take three-fifths." They would not have it. Why? Sir Thomas Hughes has told you his view was that certainly they would want three-fifths, because his view was that £21,000 odd would be necessary for the purpose of only reducing those houses in respect of which he was so desirous, so anxious, that there should be an extinction of licences. That was his view, and it was to carry out

that compromise that he proposed it. They had made up their minds apparently that this was the full extent, and as Mr. Frodsham, the last witness—who, I suggest to you, in a burst of candour, let the cat out of the bag (laughter)—said in his evidence: "I believe they (that is, the liquor interest) do support the Tory party, and there is good reason why they should" (laughter). Gentlemen, that observation of Mr. Frodsham's is the answer to the whole of the case. There is good reason, Mr. Frodsham says, why they should. The good reason was the reason I have explained to you, and I believe—I say it in justice to Mr. Frodsham—that I think what he meant by it was that there was good reason why they should, because——

His LORDSHIP.—Should what?

Mr. ISAACS.—Should support the Tory party. There was good reason why they should, because he knew perfectly that they were supported by the friends of the liquor interest. A man's politics are naturally to a very great extent coloured by his own interests, and the interests of "the trade" are protected by the association, and the votes of the trade go to the association, and indeed you may remember what he said and how he said it. The thing was so self-evident; it bore on the face of it what his view was. It is the view for which I have been contending in this case when I was seeking to explain what was meant by the friends of the liquor interest. It may be said, and it will be said, I have no doubt, "Oh, yes; but even though you don't impute any personal corruption or dishonest motive, still, when you say a man has acted as the member of a political party and sits on a licensing committee which is an administrative body"—it may be a quasi-judicial body, I care not at all about the words used—"dealing with a matter in which properly politics have no part," it will be said, "Oh, when you say they deal with that as a party, you were accusing them of doing something which is wrong, which is"—it will be suggested—I don't know—"dishonest, and that in that sense you are attacking them, and you suggest that they are guilty of dishonesty." I propose to deal with that, because, whatever my faults may be as an advocate—and I admit they are many—I cannot be accused of shirking what I believe to be the issues of the case, and it may be said that this is the view you ought to take. I submit the answer is perfectly plain. First of all, one must divest one's mind in these matters of a great deal of cant. We must look at things as they are. We must view them as ordinary human beings, and treat the actions of other men as the actions of ordinary human beings, and the motives which actuate ordinarily the ordinary man's mind, and you come to this—that you have got the close association of party interest; you have naturally, unless a man is endowed with extraordinary qualities, political bias in a man's mind in favour of those who give him such loyal and strong support. You have the political bias of a

Conservative in favour of his friends and supporters—the publican, the brewing, and the liquor interest—who might naturally outside this court, and apart from the considerations such as might be brought before you in this case—I don't think it is going too far to say, that at elections either that have passed or might come to pass in the future, you might have placards to publicans and brewers, "Vote for your own particular friends, the Conservatives, who have done so much to help you." Most men who take strong views in politics cannot entirely divest themselves of political bias, however honestly each may strive to do it. For one reason his political views are to a great extent a matter of the mental attitude which he adopts—the way in which he looks at things, at the affairs of the country, and how the country is to be administered. Generally speaking, that makes a man become a Conservative or a Liberal, and when he has once espoused a cause, it is human nature to bind yourself more closely, because it is human nature to be loyal to those you are closely associated with. And then it is, again, a third step, following out the general reasoning of what would ordinarily happen dealing with ordinary men, that he should support those who support him—in other words, support those who are his political friends. I do not suggest, and I do not intend to suggest, that in doing that he means for one moment to do anything which is wrong, or that he is doing anything which is unfair. I can quite well conceive a man saying this:—"I believe it is for the benefit of the community at large that the Conservative party should be in the ascendency everywhere." There are men who hold those views quite legitimately. And a man might say:—"I believe that, in order that this should be so, I should support those who give their support to that; and, therefore, I believe it to be right that I should support the brewing interest, which gives me so much support." Not in the exact phraseology, but substantially, Mr. Isaac Morris says this.

His LORDSHIP.—I don't think Mr. Morris said that.

Mr. ISAACS.—I said it was not his exact words.

His LORDSHIP.—I thought he said the contrary, but you need not confine yourself to what he said.

Mr. ISAACS.—I don't want to keep to exact words. The matter is so fresh in our minds. What I mean is that those are not the exact words, but it is a right inference to be drawn from what he said. I am reminded by my learned friend Mr. Horridge that what Mr. Morris said was that he thought the Conservatives should have a majority on the Bench and elsewhere.

His LORDSHIP.—That was chaff. He did not use those words. I think they were your words. He was answering a question.

Mr. ISAACS.—For once, and only for once, I am confident that I am right, as to the words used. He said that a Conservative

majority was good on the Bench and everywhere else. And, as my learned friend Mr. Horridge says, if he didn't think so, what did he want a Conservative majority for on the Licensing Committee? He got his majority, and he used his majority and brought down the levy for compensation to one-half. I know it has been said and has been pressed against me during the course of this case at the outset, before the position was made clear—it seemed to have impressed, I thought, his lordship's mind, and it might have impressed yours—as solemnly brought up by my learned friend with some elaboration, that the report of the twenty-nine houses came before the Licensing Justices as a whole, and that it was never suggested that there should be more than twenty-nine houses; but they accepted the report at twenty-nine. That was as false a point as was ever made in a court of justice. I think I may say, after eliciting the fact, as is apparent from the Act of Parliament, that the Licensing Justices have no power to say that there shall be more than twenty-nine; they have no power to add to the number. They could not say the number shall be thirty-four. The only power the body has is to reduce the number. The point is, therefore, destroyed. Something was said yesterday that you had the report presented, and no amendments were proposed, excepting those which had been referred to with reference to the maximum and the three-fifths. What is the good of proposing amendments when you see perfectly well what the result is going to be? Am I asking anything that is unfair when I ask you to make the inference that there was a large party vote in the Committee, with the exception of Sir Thomas Hughes, who has voted against the nine—that it was useless to propose amendments? And the matter then dropped. From that it cannot be suggested for one moment that my client was acquiescing in this. I am going to call some evidence as to what took place, and I will only call your attention to one last fact in connection with this matter. I may be wrong, but the impression on my mind at the time was that it seemed to have affected my lord's mind, and it may have affected yours, that the eighteen houses on which there was a compromise brought the amount of compensation to £7,855, which was the agreed amount. After that there was a further amount which was claimed, and had to be discussed, in respect to the remaining eleven houses—one having dropped out—in respect of which £13,730 was claimed. Those claims, as the authorities were entitled to, were taken to the Inland Revenue Authorities, who had the right to deal with them. But this article was written the day after, and, of course, in what was published, they dealt with the figures such as they were supposed to be at the time. On the other hand, I do not care one rap whether they were a few hundred pounds out here and there. Even so careful and accurate a person as my learned friend Mr. Taylor was a little wrong in the opening of his case. He gave £13,531 as the amount claimed for the ten houses, whereas the actual figure was £13,730. I do not complain. Such things

happen, but it shows the divergence of views. But if my learned friend makes a mistake, may not Sir Edward Russell? It is a slight mistake in figures which he made, and because it is only slight, does it justify it being said that this is a criminal libel in respect of which he ought to be convicted? Nobody would have ever known how this Committee was working but for the article of July 13th. Sir Edward Russell was then bringing before the public, who had a right to know, what the state of things were in that Committee, which was meeting in private, which was dominated by a political party. It is long after the event, long after these proceedings had been instituted, that Somerset House authorities give their decision of the claims made amounting to £14,067. This result was known only last month. I do submit that it is hardly fair—of course I accept my lord's view that the question I was putting was not relevant—that was, the question as to what took place at the dinner of the licensed victuallers. But you have got the evidence of Somerset House authorities, given in November, 1905, which is also long after the proceedings in this case were instituted, and which really throws no light upon what Sir Edward Russell was doing on July 13th, because he knew nothing of it. I thank you for the attention which you have been good enough to give to the observations I have been presenting to you; and in consequence of that attention I have, to some extent, indulged in greater length than I intended at this stage of the proceedings. I am thankful to you for your attention; it is an important case to any man who is charged with having committed a criminal offence. Don't let us attempt to belittle it by saying it is a libel. It is a criminal offence. Let us see the words of the indictment—what the law says that Sir Edward Russell has been guilty of—"that he wickedly contrived and wickedly and maliciously intended to injure and villify Isaac Morris and the other seven." That is the charge made against him in the words of the indictment which is presented to this court and you are asked to try. When you are dealing with a man of Sir Edward Russell's position, known to you, as he must be after an honoured life extending over a vastly greater number of years than most of us in this court have attained, I am not going to say one word—I would scorn to say a word, because I know that he would be the last man to wish that I should say a word that you should deal with this case as one of mercy to him. Sir Edward Russell is not here, by my hands and, by my voice, asking you to deal with this case mercifully. What he is asking and what he is begging of you to do is to deal with this case fairly and impartially, whatever your political views may be; deal with him as an honourable citizen, holding the views that he has published bona fide in his criticism, which he was entitled to administer to a public body; deal with him as an honourable man, who says he never intended what has been alleged against him that he did intend; deal with him as one who has in this, as in every-

thing else throughout his life, so well known to you as a man only anxious to continue in the path of sweetening and purifying the city to which he has the honour to belong, and which has the honour of claiming him as one of the most foremost of its citizens.

Mr. Isaacs spoke an hour and fifty minutes.

MR. JOHN HENDERSON'S EVIDENCE.

JOHN HENDERSON, J.P., silk mercer, was called and examined by

Mr. HORRIDGE.—How long have you been a justice of the peace for the city of Liverpool?—Since 1886.

The period during which licensing reform was carried on has been mainly since 1889?—Yes.

Since what time had you been a member of the old Licensing Committee?—Only for some three years.

Between what time?—Prior to the passing of the new Act. But the Licensing Committee of that time was a totally different body from the Licensing Committee as at present contituted. The old Committee had very limited power—their sole duty was a statutory one. At each Licensing Sessions they had to listen to applications for new licences. When they had decided upon those their functions virtually ceased, and it was the Licensing Bench who were the responsible administrators of the licensing law. Now that is all altered, and it is the Licensing Committee who do the main portion of the work.

What was your position in regard to the Licensing Bench?—I believe I have attended each meeting, with the exception of one or two, since my appointment.

When the Act came into operation a very large majority of justices belonged to one political party?—Oh, undoubtedly.

I want to come to the meeting which took place after the coming into operation of the Act of 1904, on the 5th or 6th January —the meeting at which the question of numbers was discussed?—That undoubtedly was the first action taken in regard to the enforcing of the new Act, because we had first to fix the number of justices that should constitute the new Licensing Committee. There were very large powers. We could have made the Committee consist of the whole body of justices, but not less than seven.

Before I come to that, the article which Mr. Isaacs has read appeared in the "Daily Post and Mercury" on the 5th December?—That I am familiar with. I have read it.

The suggestion was that there should be a Bench apart from political feeling, Sir Thomas Hughes presiding?—Yes.

ASSISTANCE IN LICENSING REFORM.

Up to that time had you received any assistance from Sir Edward Russell and the "Daily Post" in furtherance of licensing reform?—Undoubtedly; licensing reform owed a great deal to Sir Edward Russell and the "Daily Post" owing to the articles which had appeared from time to time during the time I had been on the Bench.

Well, now, will you tell me what took place at the first meeting?—There was a very large gathering of magistrates. I never saw so many in the magistrates' room before—necessarily the case, owing to the largely extended numbers of the Bench.

It had been recently extended?—Quite recently, yes. Sir Thomas Hughes proposed what appeared to me to be a very convincing reason why the new Licensing Committee should consist of fifteen members. That was duly seconded, and then immediately Sir Thomas Royden, who has been a magistrate much longer than I have, but whom I had never met before in that room, and never seen on the Licensing Bench, proposed as an amendment that the Committee consist of sixteen members. That was duly seconded, and I spoke.

Sir Thos. Hughes and Mr. Isaac Morris were present?—Oh, yes.

Did Sir Thomas Hughes state his reasons in favour of fifteen?—Well, he gave a reason why, in his opinion, that would be a convenient number to have. Judging from his past experience as a magistrate who had had greater experience than, I venture to say, any other magistrate present, I thought it was entitled to considerable weight. I was considerably surprised when Sir Thomas Royden——

His LORDSHIP.—I am afraid we can't have that.

Mr. HORRIDGE.—Sir Thomas Royden's suggestion of sixteen was put to the vote?—It was, and, as we heard yesterday, carried by a large majority.

Was that carried on party lines?—I should say so, undoubtedly.

Will you tell us in your own way how you came into contact with Mr. Isaac Morris, and what passed between him and you in regard to the constitution of the Bench?—Having fixed the number at sixteen, the next business, of course, was to elect the members who were to constitute that Committee. There were several informal conversations, and I was to call on Mr. Isaac Morris to see whether any arrangement could be come to whereby, when we met to elect members of that Committee, we would avoid confusion, and, if possible, to get a larger number of magistrates who had had previous experience elected on that Committee. I thereupon called upon Mr. Morris. I was on very friendly terms with him—and I hope I am still—and he met me in a perfectly friendly spirit. I told him

the object of my coming. I said to him, "You must recognise that it is only fair that we should have seven Conservatives and seven Liberals, with Sir Thomas Hughes as chairman." He said, "Well, there is no use discussing that; the magistrates have decided it should be sixteen, and I cannot make that division. Besides, my people, being in so large a majority, feel that they are entitled to have ten representatives on that Committee as against your six." I was very much taken aback at this, and I said to him, "Am I to understand that that is the conclusion you have come to, and that you will listen to no argument or reason?" He said, "That is so; we do not care who the six are whom you nominate, but we insist on nominating ten." I told him I had no authority in the matter, but would tell him what steps were taken. I immediately communicated with several Liberal magistrates, told them what the position was, and they strongly urged me——

His LORDSHIP.—Never mind that.

Mr. HORRIDGE.—Then certain negotiations took place between members of your party with the result?—I thought you would have allowed me to state how that was carried out. I did not seek the Liberal magistrates, but a meeting was called.

And there was a selection of six, whose names you communicated to Mr. Morris?—Yes; but I did not select the six men.

I don't suggest you did. Mr. Morris on his part selected ten Conservatives?—Yes.

I understand you want to make it clear that you did not select the six?—Oh, dear, no.

These were not in your invitation?—Oh, no. They were chosen at a meeting which consisted of a large number of Liberal magistrates.

Now, when these sixteen names came before the Bench, it was suggested that they were elected unanimously. Was there any question about it once this bargain was made?—None whatever. To the best of my recollection, Sir Thomas Royden proposed the ten. I cannot remember who proposed the six, but somebody did, and they were carried without any discussion, because no one else was proposed. Proceeding, witness added that he had on two occasions objected to the report transferring the power of imposing charges on licensed premises to the Committee; but, having failed on two occasions, he made no further protest when it came before the general body of magistrates.

Did other Liberal justices object with you?—Some of them did, but I cannot say which and if all did. They have different views on the matter.

Now, the first report that has been referred to is dated the 31st January, which prescribes the mode of procedure with regard to licensed houses?—Yes, it was formal.

I think you have got the dates on which the justices inspected these houses?—The first was on the 2nd February, and on that occasion we visited twelve houses; and of those twelve, when we returned to the magistrates' room, we agreed that three should have notice that their licences would be renewed, leaving nine to be dealt with at a future time.

I think ultimately as many as eight were actually dealt with?—They were actually extinguished.

His LORDSHIP.—Eight of those form part of the twenty-nine.

Witness (continuing).—The second visit was on the 13th February. On that occasion there were twenty-two houses visited. Eleven of those were dealt with in the way I have referred to. Notice was sent that their licences would be renewed, and the remaining eleven were objected to, and of those eight were ultimately extinguished. The third occasion was on the 16th February.

That was the occasion on which Mr. Sanders stated from his notes in evidence that one of the members of the Committee suggested that they should then fix the levy?—Yes. My own recollection is that it was Mr. Morris who suggested that that course should be taken, and urged it very strongly. Sir Thomas Hughes ruled it out of order on the ground that it would be contrary to the report, and the matter then dropped. We then proceeded to the inspection, and on that occasion we visited twenty houses; and on our return it was decided that twelve out of those twenty should have notice to the effect that their licences would be renewed, which left eight, and of those eight four only were ultimately extinguished.

From that date did you notice any difference in the conduct of the inquiry?—I did; it was most marked.

Did you notice from that date a difference in the tone of the Committee?—I did.

What did you notice?—A reluctance to agree to schedule houses.

Would you give us the result of those last three?—The last two days, out of fifty-one houses that were inspected twenty-seven only were objected to. Ultimately thirteen only were extinguished, whereas on the first two days out of thirty-four houses inspected twenty were objected to, and sixteen were ultimately extinguished. In both cases the reductions which took place were after hearing evidence.

Now, I want you to bring your mind to the occasion upon which Sir Thomas Hughes is stated to have said that "if they would pass that they would pass anything"?—I am afraid I cannot assist you there, because I do not believe I was present on that occasion. I was told of it.

Just a word about the report dated 22nd March, which relates to the amount necessary to be raised for the compensation. Now, it has been said that no amendment was proposed to that. Was it any use proposing an amendment?—I felt it was none whatever.

Throughout these divisions which took place subsequently to the inspections, what was the character of the divisions as regards political or non-political lines?—There were occasions when we were unanimous.

Oh, that is not a division.—Where there were divisions undoubtedly they were on party lines. I believe there was an exception on one occasion, but I cannot speak very clearly with regard to it; but I think that on one occasion one member of the party did vote with those who were desirous of suppressing a licence. May I refer to the importance of the visitation of these houses?

For the purpose of forming your judgment as to the wants of the neighbourhood, is it or is it not vital that the magistrates should see the neighbourhood and the houses?—Absolutely.

We come now to the meeting of the 12th July. The original motion on that occasion was made by Mr. Morris, and seconded by Sir Charles Petrie, that the scale of charges to be levied for the compensation fund for 1905 be one-half of the maximum charge shown in schedule 1 of the Act. I see, then, you moved an amendment, seconded by Mr. J. A. Doughan, that the maximum charge in schedule 1 of the Act be levied for 1905?—That is correct.

Of course, as Mr. Sanders said, if there was any excess of what you actually required for 1905 you could use it for 1906?—Certainly.

The licensing meetings are in February, and if you have no money in hand then you have to wait until a levy is made through the Inland Revenue authority, which this year has been November. In the meantime the houses have to stop open?—That is so.

If you get any surplus in hand you can at once close the houses which are to be closed?—Yes.

Without waiting for the levy of that year?—Yes.

As you moved the amendment, I may take it your judgment would have been to levy the full amount?—I thought that was essential to the provisions of the Act.

And the voting was—For the amendment, four; against, eight. I think one of the Liberal justices was not present?—Two were not present.

And Sir Thomas Hughes did not vote on that amendment?—No.

The eight gentlemen were the eight who are prosecuting here?—Yes.

Then there was an amendment, proposed by Mr. Charles William Jones, and seconded by Sir Thomas Hughes, that three-

fifths of the maximum amount should be levied for the purposes of the Act in 1905?—Yes.

Is it correct what Mr. Sanders said that Sir Thomas Hughes stated to the Committee that, inasmuch as there were claims amounting to £13,000, the Committee ought——

His LORDSHIP (interposing).—If you want that, you have the evidence of Sir Thomas Hughes.

Witness.—My recollection is that Sir Thomas Hughes's view was this: Recognising there was a certain amount of money for which we had made ourselves responsible for with those licensees with whom we had settled, and that there was a further amount of money, we did not know how much, but which we ought to assume might be required, the only safe course was to levy three-fifths to cover the total liability.

And that amendment was rejected by the majority of the committee, the voting being five for and eight against. That means that the vote of Sir Thomas Hughes added one to the majority?—That is all.

Now, I want you to take in your hand a copy of the article in question in this case, and to ask you some questions about it. I will pass over the introductory words quoted from the Prime Minister, and read on.

As Mr. Horridge was about to commence reading, his Lordship elicited from the jury that they had but four copies of the article, and he remarked that they might be able to make these suffice.

A JURYMAN (producing the morning's copy of the "Daily Post and Mercury").—We have a reprint of the article in the newspaper this morning.

Mr. HORRIDGE (reading).—"Brave words these! Now, let us see how this greatest contribution ever made to the cause of temperance reform is operating in Liverpool to diminish the number of licences. Yesterday there was a meeting of the Licensing Committee to fix the rate of the levy on licensed houses to form the compensation fund. Four members of the Committee, Messrs. Charles Jones, Henderson, T. D. Laurence, and Doughan, were in favour of fixing the rate at the maximum allowed by the Act. Sir Thomas Hughes, probably feeling that it would be impossible to persuade the Committee to impose the maximum, suggested three-fifths. Even this modest compromise was rejected, and the Committee decided, by the votes of Sir Charles Petrie and Messrs. I. Morris, Oulton, Frodsham, Giles, Menlove, M. P. Jones, and Richardson, to fix the rate at one-half the maximum." Now that is correct, is it not?—It is.

Mr. HORRIDGE (resuming the reading of the article).—"These gentlemen will hardly pretend that they were influenced in the course they took by a desire to diminish the number of licences

in the city." Now, Mr. Henderson, you were at all the meetings of the Licensing Committee, and you had the opportunity of judging the attitude of its members. In your opinion were they not actuated by a desire——

His LORDSHIP (interposing).—I don't think that is admissible. I think you are entitled to ask for anything they said; but what you ask the witness to reply would be giving an inference. You may ask for anything they said so as to show that they were influenced.

Mr. HORRIDGE.—I put the question specifically as to the meeting of the 12th July.

At his lordship's request, Mr. HORRIDGE put his question slowly, so that a note could be taken of it, the terms being:—"At a meeting on the 12th July, at which you, Mr. Henderson, were present, in your opinion, from what you could see of the demeanour of the eight justices, were they influenced in the course they took by a desire to diminish the number of licences in the city?"

Mr. TAYLOR.—I don't object to any question about what the justices said or about what they did, but I do object to what is practically an inference.

His LORDSHIP.—Then do you object to the question?

Mr. TAYLOR.—I do object to the question.

Mr. ISAACS.—It is a proper question, the question of the demeanour of a witness. It is always a question upon which a witness is entitled to speak as a question of fact.

His LORDSHIP.—But the witness must say what the demeanour was. He may be mistaken as to the meaning of the demeanour, and that is for the jury to judge.

Mr. ISAACS.—The question is admissible because the question of the bona-fides of Sir Edward Russell is of importance. I am going to submit that he is entitled to take Sir Edward Russell's view that this criticism was and is relevant to the issue. Mr. Henderson was present at the meeting, and I am entitled to get from him what his view was, based upon the demeanour of these eight justices.

His LORDSHIP.—Yes, but demeanour means saying something or doing something.

A JURYMAN.—Or looking something.

Mr. ISAACS.—Sometimes demeanour cannot possibly be described, and yet it is perfectly perceptible to the person witnessing it.

His LORDSHIP.—He may say what it was.

Mr. ISAACS.—I may say a man's demeanour was hostile, but it is difficult to put it into words.

His LORDSHIP.—That seems no answer. It is a question for the jury. The jury must know the facts in order to form their opinion.

Mr. ISAACS.—I am entitled to give evidence from those persons who were present, and who are the only persons whom the jury are entitled to hear. Thus I am entitled to give evidence from the six persons on the other side to that of the prosecutors who have given their view. These six are the only persons I can call.

His LORDSHIP.—You can call them, and say what they did and said.

Mr. ISAACS.—I will submit to your lordship's ruling.

Mr. TAYLOR.—My witnesses never did give their view.

His LORDSHIP.—Evidence may be given against them by saying what they did or said. I should like to know upon this point, because sometimes a question is extended. It is not like a criminal trial. May either party apply for a new trial? You may, Mr. Isaacs. If this is rejected you may, but what I want to know is whether Mr. Taylor is entitled to a new trial.

Mr. TAYLOR.—I cannot answer definitely at this moment, but I am inclined to think we are.

His LORDSHIP.—I think, under these circumstances, I will admit the question at Mr. Isaacs's risk.

Mr. ISAACS.—I will take it.

Mr. TAYLOR.—The only position I can take here in reference to this matter is to hold to the objection I have made.

His LORDSHIP.—You do hold to it?

Mr. TAYLOR.—Yes, and I submit that that question involves an inference by way of opinion to be given by this witness on unascertained facts, which inference and which question is really the question which the jury have to answer.

His LORDSHIP.—Do you ask me to rule according to my view of the law?

Mr. TAYLOR.—Yes.

His LORDSHIP.—Then I reject it.

Mr. ISAACS.—I make my objection, my lord.

Mr. HORRIDGE (to witness).—Were those divisions on the 12th July, except the vote of Sir Thomas Hughes, on strict party lines?—Undoubtedly.

Were any remarks made by any of them at that meeting of the 12th July which you would like to mention?—No; what do you refer to?

Mr. HORRIDGE.—My lord says I am not entitled to ask you about their demeanour. Did they say anything about their views on the question as to whether they were influenced by the desire to diminish the number of licences in the city?

His LORDSHIP.—You are clearly entitled to ask that, Mr. Horridge. (To witness) Did they say anything, and if so, whom?—There were three proposals at that meeting.

His LORDSHIP.—I don't want you to sum it up in fragments. Tell us what was said. Was anything said by them to show that they were not influenced in the course they took by the desire to diminish the licences?—Yes, the full levy I had proposed. Objection to that was taken on the ground——

His LORDSHIP.—Will you say by whom?

Witness.—No, I cannot.

Mr. HORRIDGE.—Was it by one of the eight who are here to-day?—By one. I cannot say by which of them. You see there were no records kept of our proceedings, and therefore I am not going to charge my memory; but it was said, in answer to my proposal to levy the full amount, that it would be very unfair to the trade.

His LORDSHIP.—Is there anything else that they said relative to the question?—No.

Mr. HORRIDGE (continuing to read the article).—"The sum which it will be possible to raise in the current year at the fixed rate will amount to about £17,500." That isn't strictly accurate. It turned out to be £18,000, didn't it?—Well, no one knew that at the time. It has only been ascertained since what the actual amount was.

Mr. HORRIDGE.—Did you see the article in the "Liverpool Courier" which was published between these two articles of the "Post"—namely, on the 8th December—and in which the "Courier" put the figure of the maximum levy at £35,000 a year?

His LORDSHIP.—I think you may ask that question, but it is worth nothing. Because an irresponsible paper, the "Courier"——

Mr. ISAACS.—The "Courier" an irresponsible paper, my lord (laughter)!

Mr. HORRIDGE.—It appears from the "Courier" that in Liverpool the maximum levy would be £35,000 a year. (To witness): So that the "Courier" has fallen into the same mistake as Sir Edward Russell?—Undoubtedly that is so. That was the figure at the time it was assumed that it would produce, and it was never known for a certainty what it would produce until we got the return from the Inland Revenue as to the amount collected.

Mr. HORRIDGE (reading).—"Now, apart from expenses of administration, which will be considerable, the very modest programme which the Bench have decided on for the present year must involve an expenditure considerably in excess of the total that can be raised by yesterday's decision. The Bench have not ventured to propose the extinction of a single full licence." (To witness): We are told there were two fully-licensed houses taken. How was that?—

Well, one undoubtedly arose from a very serious fire, which had partially destroyed the house, in St. John's Lane. That was one fully-licensed house, and it was under those circumstances that it came before us. There were special circumstances in the other case, but I forgot what they were.

Mr. HORRIDGE.—I think you are wrong there, Mr. Henderson. I am told the St. John's Lane house did not come in the claim for compensation.

Mr. TAYLOR.—Mr. Henderson says it did.

Mr. HORRIDGE.—Do you know whether it was one of the two?—I am under the impression that it was dealt with at that time in that way.

His LORDSHIP.—We can very easily refer. We have got the minutes.

Mr. HORRIDGE.—Yes.

Witness.—I am possibly wrong.

Mr. HORRIDGE.—The two houses were in Kempston Street and Newbold Street. Do you know how they came to be included?—I do not.

They are the only two. The bulk of the cases were beerhouses?—Yes. We decided at the first meeting that we would only deal with beerhouses in the two divisions.

Mr. HORRIDGE (reading).—" But they have picked out a few 1869 beerhouses in the A and B divisions for abolition under the new Act. Compensation for a few of these, amounting in all to £8,000, has been fixed by mutual agreement, and the rest have been referred, as provided by the Act, to the arbitration of the Inland Revenue authority. The amount in these cases is not likely to be less than £13,000. The matter, therefore, stands thus—for the extinction of the selected licences, licences which the Bench have decided ought to be extinguished forthwith in the interests of the community, a sum of not less than £21,000 is required, and now the Licensing Committee decline to levy a larger sum than £17,500. There is only one explanation of this state of affairs. The dominant party on the Bench." (To witness): Is there any doubt as to who are the dominant party on the Bench?—None whatever.

Is there any doubt as to who were the dominant party on the Committee—None whatever.

And they were the eight magistrates who always voted against the extinction of licences?—Undoubtedly.

Mr. HORRIDGE (reading).—" Do not facilitate the working of the greatest contribution," &c. I do not propose to go through the farce of putting the question right through.

Mr. TAYLOR said he was willing that it should be recorded that Mr. Horridge put a series of questions which were objected to.

Counsel next put to witness the description of a house in respect of which Sir Thomas Hughes was alleged to have said, "If you pass that you will pass anything."

His LORDSHIP.—"A" we will call it.

Mr. HORRIDGE.—Will you describe it?—I describe it as absolutely unfit to be continued as a licensed house. There is no question about it.

Take another house referred to?—Yes. I know the house. I visited that, and I am of opinion that that ought to have been extinguished.

Are there two others there?—Yes; I recognise one. I visited that house, and I say that is also unfit and ought to have been extinguished.

And the fourth one?—I know this house also. I visited this, and that undoubtedly ought to have been extinguished.

Can you say whether the eight gentlemen voted against the extinction of these four?

His LORDSHIP.—Do you say eight? It does not follow. We know Mr. Oulton was not there.

Mr. HORRIDGE.—I do not know how that was.

Mr. TAYLOR.—It does not prevent the question being put, but this matter has not been brought to the attention of my witnesses.

Mr. ISAACS.—Yes, I put it yesterday about the four, and I said I would put one as a sample.

His LORDSHIP.—I can't say that it is not admissible evidence.

Mr. HORRIDGE (to witness).—Can you tell me that such of the eight gentlemen who were present voted in favour of continuing the life of these houses?—Yes.

His LORDSHIP.—You were there?—Yes.

Mr. HORRIDGE.—You voted on all the houses?—I am not quite sure that there was not one that I was not present. It was the one that called forth the observation by the chairman.

Were you and the other justices, in your opinion, trying, without injustice and discontent, to effect a sorely-needed reduction?—Oh, undoubtedly that was our object in being there.

Mr. HORRIDGE (reading).—"The effect of the Committee's decision will be to make the rate of reduction actually less than it was under the old order of things." Now, I want to get the figures. In 1905 forty-eight licences were extinguished?—Yes.

In 1904 the licences extinguished were sixty-six?—Yes.

In 1903 the number was eighty-one?—Yes.

It was suggested that that was for two years?—Witness explained that under the new Act the Licensing Sessions were put off from August and September to February.

His LORDSHIP.—I think they said eighteen months.

Mr. HORRIDGE.—With this annual effect is it correct to say that the effect of the decision was to make the reduction actually less than it was——

His LORDSHIP.—There are two things—the effect of the Committee's decision to levy one-half. It had no effect at all. The Committee's decision to levy one-half instead of three-fifths, or the whole, had no effect at all, because the amount, £14,000, raised was more than sufficient for the whole of them.

Mr. ISAACS.—The effect will be to make it less. It follows as a simple rule of arithmetic that it will make the rate of reduction less.

His LORDSHIP.—You cannot increase the number, twenty-nine, and the effect of the Committee's decision if you did not get the sufficient money was to reduce to twenty-nine. If there was sufficient money there was no effect at all.

Mr. ISAACS.—The answer on the other side would be if the Committee had levied double the amount, the rate of reduction could have been double what it was.

His LORDSHIP.—Next year?

Mr. ISAACS.—Next year, or even this.

Mr. HORRIDGE (to witness).—It is true the report of the whole Bench could not be added to, but the decision was arrived at by the Committee before it came before the Bench at all as to the amount of levy?—Yes.

About the objections which had been lodged by the Vigilance Committee, witness said:—I can say of my own knowledge the Vigilance Committee was formed on the advice of the late Sir James Picton in the magistrates' room, at which I was present, and that the Vigilance Committee during the following ten or fifteen years objected to a very large number of licences, and appeared continually year after year at the Licensing Sessions.

Mr. HORRIDGE.—Were there any magistrates on the Committee at all?—No, I do not believe there were any. I believe if one of the members became a magistrate he was omitted from the Committee—he retired from it.

CROSS-EXAMINATION OF MR. JOHN HENDERSON.

Mr. W. F. TAYLOR then cross-examined the witness.

I think you said just now that you were present at the founding of the Vigilance Committee?—I was present in the magistrates' room when Sir James Picton suggested the formation of that Committee.

Of course, there would be none but magistrates present?—Oh, yes; there was a deputation waiting upon the magistrates for a definite purpose.

I forget whether Sir James Picton was a magistrate?—Oh, yes; to the best of my recollection he was chairman of the meeting of magistrates.

He received the deputation, and suggested the formation?—Yes.

Was there some resolution passed about it?—I cannot say; it is a long time ago.

I suppose you have known Sir Edward Russell a very long time?—I have.

And I suppose you and Sir Edward Russell during the long period you have known him have frequently met?—Undoubtedly we have.

And frequently meeting have very often discussed these matters, which have been described as matters of policy?—I should say very rarely.

But I suppose you have discussed questions of licensing reform?—I cannot remember on any occasion.

You say you and Sir Edward Russell have not discussed questions of licensing reform?—I cannot remember on any occasion when we have.

Not within recent times?—No.

Had you any meeting with Sir Edward Russell about the period when the article of the 5th of December, 1904, appeared in the "Daily Post and Mercury"?—No.

Or with anyone representing Sir Edward Russell or that paper?—I really don't know in what form you want——

If you don't know you can't tell me, I suppose. It seems tolerably simple. Had you on or about 5th December, 1904, a meeting with someone who represented the paper in which the article appeared?—Oh, dear, no. Nobody that I knew of. I cannot charge my memory with ever discussing licensing with anybody connected with the "Daily Post and Mercury" at that time.

Did you know that the article of the 5th of December was about to appear?—No.

I suppose when it appeared you read it?—Certainly.

Did you think the suggestion contained in that article with reference to the formation of the new Licensing Committee was a good one?—Yes.

That suggestion was that a certain number of gentlemen should be selected from amongst the magistrates on either side of politics?—Yes.

The number to be taken by selection from the Conservative and Liberal sides?—Yes.

You thought that good?—I did.

And the analogy on which that was founded was the course that had taken place when the first Liverpool School Board was elected?—I remember that.

Do you think that a good type to follow?—Oh, undoubtedly.

I daresay you recollect that School Board very well?—Yes, and I recollect very well the interest Christopher Bushell took in it.

It is correct, is it not, to say that if you follow that type it gave a representation to the various bodies interested in education?—Yes.

And it gave them a representation in proportion to their numbers?—I cannot say that.

I daresay you agree with some passages in the article. Do you think that the members of a Licensing Committee should bring to the discharge of their duties good faith?—Undoubtedly.

And that any question arising which would impeach their good faith would be calamitous?—Undoubtedly.

And I suppose you would resent and think improper any introduction on to a Licensing Committee of political partisanship?—Certainly.

Another passage says: "That there should be in such a body absolute confidence in their rectitude and bona-fides"?—I agree with that.

"As administrators of supreme legal powers." You think that is most essential and desirable?—I do.

You say you did not select these six gentlemen?—I do.

They were selected by others?—They were; it was a meeting called by Mr. H. H. Hornby, who is one of the oldest Liverpool magistrates. Liberal magistrates were asked by Mr. H. H. Hornby to meet at the Reform Club to discuss what course should be taken with regard to the new Licensing Act. They were selected by general consent.

You were present at the meeting of the justices of the 19th January?—Yes.

The whole sixteen were proposed together, were they not?—That I am not very clear about. My own impression was that the ten were proposed and then the six.

I suggest to you that the whole sixteen were proposed by Sir Thomas Royden and elected together?—I do not dispute it.

No other names were proposed?—That is so.

And there was no discussion?—None whatever.

Did the Lord Mayor preside on that occasion?—I rather think he did.

Did he congratulate the meeting on the unanimity on that point?—Really, I cannot say, the whole thing was over in a few minutes.

You were elected to go on the Licensing Committee?—Yes.

I suppose you knew at once from the terms of the resolution that you had to consider about the delegation of powers?—Oh, yes.

When was that matter considered?—We had so many meetings that I really cannot say.

I see by a minute of the 24th January it was decided to confine the attention of the Licensing Committee to the A and B divisions. Why was that?—Because of the short time between the coming into operation of the Act and the formation of the Committee that would be at our disposal.

The Committee did not want to have too much on their hands?—It was not what they wanted, but what it was possible to get done.

You had, I suppose, no objection to that?—No.

Do you say or not that you had yourself any objection to the report dated 31st January?—Does that include the recommendation to delegate the powers of the levy?

Yes, it does?—Well, I do. I have explained already that I took exception to that on two occasions, but I gave a tacit consent to the report submitted.

You knew that that was settled?—Yes.

As to this power of levying, you thought they ought to levy by the whole body?—Yes; I should have preferred that.

You thought the whole body should take the responsibility?—Yes.

I believe you had before your mind at that date the estimate of the probable sum that would be raised by levying the maximum charge?—Yes.

Therefore, you had fairly before your mind, at that date, the sum of £36,705?—I had.

You raised no objection to that sum as an estimate?—Yes; I accepted it as an estimate certainly.

In that report I find a paragraph, on page 14, which I have to ask you about. The Committee make a recommendation, I see, to form some estimate of the amount before the levy was made?—Yes.

And you thought that a wise course?—The chairman suggested it, and I agreed with it.

I daresay you agreed with a great deal of Sir Thomas Hughes's ideas?—Yes.

His LORDSHIP.—Was the report drafted by Sir Thomas Hughes?—It was drafted, I believe, by the law clerk.

Mr. TAYLOR.—It is stated in the minute to have been settled by the chairman and the deputy-chairman, that is Mr. Isaac Morris?—That is Mr. Morris.

You have no reason to doubt the truth of the statement that they settled the draft between them?—No.

And you assented to it?—Yes.

Then did you assent, do you agree, to this part: "In reference to the charge which it will be found necessary for the Committee to impose, it will be sufficient to pay the necessary compensation and the expenses of the administration of the Act." You agreed to that description of the charge?—I agreed to the report, as I have told you, as a whole. Having made my protest on two previous occasions I was not going to be obstructive.

That is another matter. The question is whether you objected to the report?—No.

Was it your view, on or about January 31, 1905, that "the charge imposed should be a sum sufficient to pay the necessary compensation with expenses"—was that your view?—Yes, with the reservation I have made.

What reservation?—I didn't take exception to the report, having already made my protest with regard to the levy.

His LORDSHIP.—Can you answer for the whole six?—No; I cannot answer for the six.

Mr. TAYLOR.—May I take it, if you had been told on January 31st that £15,000 would be enough to make the compensation, you would not have desired to vote for the maximum amount, would you?—Yes, because I knew we should require it.

Why should you require it?—To facilitate the progress of the work.

Then, if that is so, what is the sense of the sentence in the report that the charge which it would be necessary to raise would be only the necessary compensation, or "sufficient to pay the necessary compensation?" Do you mean that after assenting to that proposition you would have gone and voted for the maximum?—Yes, I do.

Upon that date, when this report was fresh in your mind, possibly you had forgotten it by July 12th?—Possibly I had.

If you had remembered it, would you have voted for the maximum?—Yes, because I knew it would be required to facilitiate the work in the early part of the coming year.

Then you would have voted for the maximum levy in order to get something in hand for the year with which you were not dealing?—Yes.

Did you think that would be a proper thing to do, having regard to the report you had made to the whole body of the justices?—I saw nothing improper in it.

Did you not think, when you, as a Committee, had reported—that it was necessary to impose a charge sufficient to pay the necessary compensation and the expenses—to the whole body of justices, it would much surprise them if you voted for a charge of double that amount?—I am not answerable for their surprise (laughter).

Do you think it would be quite right to do it?—I think it was consistent on my part, having made the protest I had in the first instance.

Ah, sir, you never made any protest about the amount.—No, I agree I didn't.

Then having made no protest about the amount, and having assented to the sentence I have read, do you consider it was fair to the body which had delegated to you their powers to vote for double the amount necessary?—Yes, I thought it was necessary.

But did you think it was fair?—Yes.

Fair to the body which had delegated to you their powers?—Yes.

The next report, we know, is that of March 22nd. Between Janary 31st and March 22nd you had gone through the inspection of these houses—you with others had gone through the inspection of some of the houses?—No, I had gone through them all.

I thought the chairman and the deputy chairman did the inspection alone sometimes?—No, not "sometimes," but upon one occasion.

And you, of course, were not there then?—No, but I dealt with the whole eighty-five houses, and I visited the whole.

You say there were two occasions on which a certain number of houses were objected to, or, at any rate, picked out?—Yes.

And notices were to be sent to these licensees?—Yes.

I want to be quite clear about this?—There was a reluctance exhibited among the Committee on the third day of the inspection which had not appeared on the first two days.

You mean that you thought you saw a reluctance on the part of these eight or nine gentlemen?—Yes.

Can you give me the date at which you arrived at that conclusion?—Yes, February 16th.

That was the date of one of the meetings?—Yes, it was the third meeting.

Now may I take it that it was February 16th when you came to the view, as you express it, that there was a reluctance on the part of these eight or nine gentlemen?—No, that was not so; I came to the conclusion at a later period that from the 16th there was a complete change.

His LORDSHIP.—You were asked whether you came to that conclusion on February 16th?—On that date undoubtedly, but it was strengthened as we went on; that was the commencement.

Mr. TAYLOR.—If your view was right, the number of houses ultimately to be reported would be less than you thought proper?—Yes.

In your view that was a serious matter?—Very serious.

Did you make any protest about it on the 16th February?—Yes, I think that that was the day that I made a remark and asked for an explanation.

Did you ask that your protest should be made on the minutes?—Oh, no.

Did you after that date?—Our minutes were of a most informal character.

I daresay. You have told the jury that you knew you were in the minority. It would be important, if you really felt this, to have had some record of your protest. However, you did not?—No.

You had the epitome of proceedings sent to you after every committee meeting?—That is so.

You never did have any protest recorded about the matter?—No.

When you saw which way things were going according to your view, did it occur to you that some notes should be taken of it in the press?—No, it never occurred to me to do anything of the kind.

You did not think it a matter, then, of sufficient importance to have it publicly noted?—I thought it was a matter of the greatest importance, but it never occurred to me how it could be reported.

These meetings were held in private?—They were.

Did you think it desirable that public comment should be made on that?—Perhaps you never thought of it?—I never thought of it.

BISHOP OF LIVERPOOL'S EVIDENCE.

Mr. ISAACS.—I have asked my friend to allow me. The Bishop of Liverpool is here, and I want to ask him two or three questions. I do not want to ask the Bishop to come again.

His LORDSHIP assented to the Bishop being called at that stage.

The BISHOP OF LIVERPOOL was then examined by Mr. Rufus Isaacs.

You have known Sir Edward Russell for a number of years?—Yes; since I came to Liverpool, five and a half years ago.

Have you known him in particular in connection with temperance reform within the city of Liverpool?—Yes, I have.

Has he been associated with you and others in the promotion of temperance reform in this city?—He has.

Has he always lent the best of his efforts and energies in that direction?—I am sure he has.

And have you, and those associated with you, in this movement received assistance from his co-operation?—The greatest assistance.

Has he also lent the assistance of his paper, the "Liverpool Daily Post," with this object?—He has done so.

Has that also assisted in the movement which you had in view?—Yes; assisted very greatly.

You are acquainted with the social condition of Liverpool?—Yes, I am to a certain extent.

And in particular, I suppose the question of intemperance comes under your cognisance?—Constantly.

In your view is it necessary that the number of public-houses should be reduced in Liverpool for the benefit of the community?—Certainly.

And in your view, would that course tend to improve the social condition of the city?—I believe it would.

In your view should that course be taken as rapidly as possible?—Certainly.

Mr. TAYLOR.—I suppose you would agree that the tribunal that was to deal with such questions should have regard to all legitimate considerations?—Certainly.

And I suppose that you, as Bishop of Liverpool, so far as you know them, have yourself confidence in those who are called to administer the licensing law?—Those that I know, certainly.

Mr. ISAACS.—In your view is it desirable that this question should be dealt with as a question of party politics?—Certainly not, certainly not. It is a national question, not a political question.

MR. HENDERSON'S CROSS-EXAMINATION RESUMED.

Mr. JOHN HENDERSON again entered the witness-box, and his cross-examination was resumed by Mr. TAYLOR.

Taking the inspection of these houses up to the point when you arrived at the conclusion which was strengthened on the 16th February, can you give us the areas you had been visiting up to that date?—We were confined to two divisions, A and B. A Division is a comparatively small one, and embraces the centre of the town. B Division runs from Hanover Street, up to the Philharmonic Hall, and then across to Brownlow Hill. The two first days we were on A Division.

Do you think that the difference in area may have something to do with the different results?—I don't think so.

I don't mean in extent; I mean in character?—I quite understand what you mean; but I don't agree.

Look at the report of the 22nd March; it contains the twenty-nine houses. You agreed to that report?—I assume so; I have no recollection.

Tell the jury, had you any objection to it or not?—Well, I made no objection to it.

I want to know if you had any. You had a draft of the report?—I don't know.

Do you forget?—I had so many drafts.

It says that on this date the Committee considered the draft report prepared by the clerk, Mr. Sanders, relating to the twenty-nine licensed premises which the Committee had decided to refer. Did you agree to that, or did you not?—Yes.

And made no protest as to the number being limited to twenty-nine?—I made no protest.

Nor did you think it necessary?—Evidently.

Did you agree that that was the right number to send up to report?—No.

What did you think was the right number?—Well, I never fixed a right number, but I thought there ought to have been more.

You say you made no objection to it?—No.

Did you consider the last paragraph in that report—"The compensation provisions of the Act being at present in an experimental stage, it is impossible for the Committee to give any reliable estimate as to what it will cost to extinguish the twenty-nine licences referred to in this report." Did you read that?—Yes, I read that.

And you agreed with it?—I agreed with it as far as I can agree with anything which is only an estimate.

His LORDSHIP.—Did you agree that the average cost would not exceed £500?—Yes.

Mr. TAYLOR.—Had you seen any reason to alter your estimate for these twenty-nine houses at the time—the 12th July?—No.

And if you had been asked on the 12th July what sum would be probably sufficient to compensate the twenty-nine houses, you would have agreed about £14,500?—Yes.

Now, about the next sentence—"If this estimate should prove correct——"

The Witness.—Excuse me. I don't know that I quite understood that question correctly.

Mr. TAYLOR.—Perhaps you now see the effect of what you said. But answer it in any way you like. I don't mind?—Well, I want to answer it correctly. At the time we had come to an agreement.

Mr. TAYLOR.—Yes, you had settled the sum payable at £7,855?

His LORDSHIP.—That was an average of something under £450?—Yes.

Mr. TAYLOR.—That would rather tend to reduce the £500 than increase it?—I don't know.

Perhaps you did not think?—Did not think what?

About the estimate.—At what period?

On the 12th July.—No, I did not. I was dealing with facts ascertained.

What were the facts ascertained?—The value of the houses.

Do you mean the £7,855?—Yes.

You had got that as an element ascertained?—Yes.

Did you think the ten were £500 a-piece?—No. I took the claim, £13,000 odd.

Then, by the 12th July you found reason to disagree with the estimate?

His LORDSHIP.—No; he has not said that. He said, "I did not disagree with the estimate, but I took the full sum."

Mr. TAYLOR.—Well, I should very much like to know why, when you were thinking what probable charge was the right amount to levy for the compensation fund, you took the whole claim in the ten cases as the right sum. Why?—Well, I thought I had already answered that in the chairman's words—"That as prudent men we ought to provide for the utmost that might be awarded."

Do you tell the jury that you sincerely thought these ten houses would be, or could be, awarded the full amount, as a business man on that Committee?—I cannot say that I attempted to think on the question at all.

Oh, if you say you did not attempt to think, I dare say that accounts for your vote (laughter)?—I accepted the claim, and until I knew what the Local Government Board fixed I should have looked forward to that as a liability which I had to meet.

Then you tell the jury you took the claim, and, as far as estimate went, made no estimate on the 12th July?—No, I took the actual fact.

The fact of the claim?—Yes.

This is not the sort of thing you would do if you were raising some charge in your own affairs?—Most assuredly. Then I would prepare for the worst.

I don't know whether you would like to be assessed on such a basis as that?—I don't know what you mean by being assessed.

Supposing you had to be assessed or charged to provide for a claim, would you like to be assessed on the full amount of the claim or on the real amount of what the claim ought to be?—I cannot follow you.

His LORDSHIP.—He means if it had to come out of your own pocket.

Mr. TAYLOR.—Yes, instead of out of the pocket of the trade. Would you have voted in this way?—Yes, I would have provided for the maximum amount.

Were you present at any of these supplemental meetings where these claims were brought forward for the ten houses?—Yes, at all.

Were they characterised by Sir Thomas Hughes, the chairman, with any description?—I don't recollect anything.

I will put it to you, were they characterised by Sir Thomas Hughes as "extravagant and exorbitant claims"?—I think words to that effect were used.

Did you agree with that—that they were "extravagant and exorbitant claims," or did you disagree?—I was not called upon to give an expression.

I asked for your opinion. Do you think Sir Thomas Hughes was right?—I did not think anything about it.

His LORDSHIP.—But you were there because you had to determine whether you would agree to the claims?—I certainly would not agree to them.

Mr. TAYLOR.—Why?—Because I thought they were too much.

Yes, now you do. I want to know whether you did not think Sir Thomas Hughes was right when he characterised these claims as exorbitant?—I did not form any opinion as to the amount.

His LORDSHIP.—You thought it was too much?—Yes; but as to whether I thought it exorbitant is another matter.

Mr. TAYLOR.—Do you think they were too much?—I cannot possibly tell.

Perhaps you have no degrees of comparison in thought. Well, now, about the 12th July. Did you address the Committee at all?—That was the day for fixing the levy. I do not know what you mean by addressing the Committee. I proposed a resolution.

I mean proposing a resolution and making some observations?—Undoubtedly I made some observations.

I don't say they were the resolution of thought; but did you make some observations?—Yes.

I want to ask you, did you in those observations make the quotation, which appears in the article of the 13th July, from the Prime Minister?—No, I did not.

Any part of it?—Not knowingly. I quoted some words from the Prime Minister, but they were not the words contained in the extract which appeared in the alleged libel.

Were they some of them?—That I cannot be sure of.

I suggest to you that you gave this very quotation:—"I am perfectly convinced that when the Bill is working, and when it is seen that by this Bill, and by this Bill alone, you can without gross injustice and discontent really diminish the number of licences in this country, all parties, forgetting the differences which have unhappily divided us for the last three months, will admit that this is the greatest contribution ever made to the cause of temperance reform." Do you remember that, Mr. Henderson?—I wish I could.

I do not see any difficulty about it, either physically or mentally.—Well, I should have to remember it, shouldn't I?

I do not know. You might have had a note of it.—I did quote some words. I want to be absolutely frank. I had that memorandum in my pocket at the time.

Of this quotation?—Yes; but I didn't use it. I never used it, to the best of my recollection.

Was it in your pocket?—Yes.

How did it happen to get there?—I had had it there for months (laughter).

I see. Always ready to draw on when occasion required (renewed laughter)?—I thought it was a very important utterance, as a licensing magistrate, to have, and to remember and act upon.

His LORDSHIP.—You had not forgotten it?—I do not think I could have repeated it from memory; but I was really quoting from some other statement of Mr. Balfour on the same subject.

His LORDSHIP.—Which you also had in your pocket (laughter)?—No; that I had in my mind.

Mr. TAYLOR.—I suppose you have not got it with you now?—No.

You had this very sentence in your pocket?—I had.

Which you had been carrying about for months?—Yes.

Had you quoted it often on other occasions?—I do not know that I ever used it in any form before.

Then you would be the more anxious to dazzle the Committee with it (laughter)?—I was not, you see, because I did not produce it, and I did not read it.

Are you sure?—I am quite sure. I am certain of it.

Well, it had been lying by, hatching in your pocket for a long time. Did not you read it there, or quote, as well as your memory would serve you, from it?—No.

Are you sure?—I am sure as I can be of anything.

However, you had it there, and you did make some observations, in which you quoted words from Mr. Balfour; but what they were you cannot tell us. Eh?—They were words to the effect that "This Bill will enable you to make a large and immediate reduction in the number of licensed houses."

Mr. TAYLOR.—"Without gross injustice and discontent?"—I think I added that.

"All parties forgetting their old differences?"—No, I did not say that.

You did not want that (laughter)?—No, I have no recollection. If I had read the extract I should have read it in its entirety.

Did you advance any reason for imposing the maximum charge?—Yes; I think I did. If not required for immediate use, we should require it immediately on the next occasion.

You told me it was said it would be unfair to the trade?—Yes; I think that remark was made.

Did you say it would help to crush out the small man?—No; I have no recollection of saying anything of the kind.

Will you say you did not say it, and that was why you wanted the maximum levy?—No, certainly not; I did not.

You did not?—I have no recollection of saying it.

Did you say that if the maximum charge were imposed the small man would not be able to afford it, and would be crushed out?—No.

Nothing to that effect?—I have no recollection. I have no recollection of saying anything about crushing anybody.

His LORDSHIP.—Did you say anything about crushing?—No.

Mr. TAYLOR.—Did you say anything about their being unable to pay?—I may have said so, but I have no recollection.

Did you think it?—It is impossible to say.

On the 12th July, when you found yourself defeated by an adverse majority, did you ask Sir Thomas Hughes to have names recorded, and he refused?—I really cannot remember. It was not usual. I wish it had been, though.

Did you commuicate the result of this discussion to the "Daily Post"?—No.

In any way?—No.

It's a private meeting, you know?—Private in the sense that there were no reporters present; but I did not feel that I was pledged to secrecy.

Did you communicate it?—Directly, no.

But indirectly?—I referred to what took place in the presence of someone connected with the "Daily Post."

What is his name?—Mr. Farrie.

Where was this?—In the Reform Club.

What room?—The smokeroom.

Who was there?—Really, I can't remember.

Did you arrange you should meet somebody there?—Oh dear, no.

Was it accidental?—Quite. I went in to have a cup of tea.

And there you met Mr. Farrie?—Yes.

Was there anybody else there representing the "Daily Post"?—Yes, I think Mr. Jeans was there.

Anybody else?—There were several others there.

But connected with the "Post"?—Oh, no.

There are two Mr. Jeans on the "Post;" which was it?—It was the elder Mr. Jeans.

His LORDSHIP.—What is he?—I think he is manager.

Mr. ISAACS.—Managing director.

His LORDSHIP.—What was Farrie?—Really, I don't know his position.

Mr. TAYLOR.—Perhaps he writes leading articles?—I don't know.

Did they ask what had been done at the Licensing Committee?—No, they did not.

Perhaps you told them?—In the course of conversation. I was feeling very indignant at the result of the meeting, and I did not hesitate to repeat frankly and openly what had occurred, and that we had fixed the levy at one-half. I mentioned the names of the magistrates present, how they voted, and that the fact that the chairman had proposed a levy of three-fifths.

This, I suppose, with the view of extracting or obtaining some public comment?—None whatever. I had nothing in my mind about that at all.

Did you see Sir Edward Russell about the matter at all?—Oh dear, no.

How long did this interview last?—I think I was there half or three-quarters of an hour.

Discussing this topic?—Yes, and drinking tea (laughter).

Had you any memoranda about you?—None whatever.

You gave it entirely from memory?—Yes.

Did you give them any other facts, or what you thought were facts?—No.

Did they take any notes?—I don't think they did.

Did you give them the figures?—Yes, I did.

Are you responsible for the £17,500?—Nay, I am sure I can't say.

Can't you remember what figures you gave?—I think I gave them the correct figures.

Did you give them the figures which you stated the halfrate would produce?—Oh, yes, that was so; half of £35,000.

You gave that?—I referred to that; I gave nothing.

Why didn't you give the estimate you assented to, of £36,000, in January?—I was not giving anything in the nature of information, but only talking about what had occurred.

Among the items that were not information you gave the sum of £35,000?—Well, I may have done, or may not; I can't say.

His LORDSHIP.—You have said so, you know.

Witness.—Very likely, my lord, I did.

His LORDSHIP.—Did you give them the rest of the figures?—Yes, I think it is most likely.

Mr. TAYLOR.—Did you tell them the expense of administration would be considerable?—I think it is probable I made that remark.

And that the modest programme the Bench had decided upon must involve an expenditure considerably in excess of the total that could be raised?—No.

Are you sure?—I am sure of that.

Did you say that not a single fully-licensed house was proposed for extinction?—No.

Are you sure?—Yes.

Did you say they picked a few 1869 beerhouses out?—No.

Did you say that compensation had been fixed for a few at £8,000?—I should think it very likely.

And that the rest had been referred?—Yes.

Did you tell them what the number was that had been settled for £8,000—that it was eighteen?—I think it is quite probable I did so.

And did you say that the amount in the cases referred to the Inland Revenue authority was not likely to be less than £13,000?—No. I think it likely I mentioned the amount that was referred to the Inland Revenue.

What I am putting to you is, did you make any statement that £13,000 and not less was likely to be required?—No.

Did you mention the two sums added together?—I cannot tax my memory with that at this date.

I suppose you made a certain number of comments on what had been done, as well as giving the figures?—Undoubtedly. One of the comments I made was that I felt it would be perfectly useless going on with similar work in Liverpool, that they were merely registering the acts of the dominant majority.

Did you after that interview with those two gentlemen give the same information or similar information to anybody else?—No; that was the only occasion upon which I talked so fully.

His LORDSHIP.—Did you give part of that information to somebody else?—I might have done, because I talked about it for a week.

Mr. TAYLOR.—Did they say they were going to put it into the paper?—No.

Did you understand that would appear in the "Daily Post"?—No.

If you had known, would you have reflected a little more?—No. I think it was a matter that should have public notice taken of it, most assuredly.

RE-EXAMINATION OF MR. HENDERSON.

Mr. ISAACS.—I understand you came there without appointment of any kind, fresh from the meeting?—Yes.

For the purpose of having a cup of tea?—Yes.

Not by appointment?—No.

And you said you were indignant?—Yes. I came away with my colleague Mr. Charles Jones, and we discussed the question, and we each felt exceedingly indignant at the time that had been taken up and the smallness of the results.

Then you stated this before some half-dozen people in the club?—Yes, in course of conversation.

So far as you were concerned, was there any reason why this should be kept secret?—None whatever. I think it is a matter of public interest that ought to be made public.

Did you state your views with regard to it?—Yes, quite openly at some length, but in conversation.

Did you know Mr. Farrie?—Yes.

He is a member of the club?—Yes.

He is a gentleman of considerable position?—Oh, yes. I met him in a friendly manner there, without regard at all to his

connection with the " Daily Post " ; in fact, I never recognise that he is connected with the " Daily Post."

You saw the article of the 13th July?—Yes.

And substantially did that bear out the views which you had stated?—Yes.

And the views which you honestly and bona fide held with regard to the proceedings of this Committee?—Yes.

And which, without any ill-feling to your brother magistrates, you felt with regard to those proceedings?—That is so.

And so far as you were concerned can you tell us was that view shared by the other men who formed the six who had been on your side?—As far as I was able to gauge their feelings they agreed entirely with my own, which was one of indignation.

As to the quotation which we have heard a good deal about from the Prime Minister's speech on the third debate of the Licensing Bill, as far as you were concerned, was that a matter which was pretty generally known and commented on by those who were interested in licensing reform?—I think so. I was so impressed with the importance of this bill that I indulged in the luxury of a full copy of Hansard that contained the whole of the debates on this licensing bill, and I endeavoured to make myself master of the opinions of those responsible for the passing of that Act, and it was in that way I came across that and various other matters which I took note of.

It was in connection with the work which you had to do as a licensing justice?—Knowing of what vast importance it was to the people of Liverpool that the Act should be given effect to to its fullest extent.

You have had it suggested by my friend that at this meeting on the 12th July you said that by levying the maximum amount you would be crushing the small man?—I cannot believe I could possibly say anything approaching that, because my sympathies have always been with the small man who occupied his own public-house and carried it on for his own benefit. I have always sympathised with those men and protected them as far as possible.

Mr. ISAACS.—At that meeting you were proposing that the maximum amount should be levied, and was that your honest view of how the Act ought to be administered?—

His LORDSHIP.—I do not think you should put that, Mr. Isaacs.

Mr. ISAACS.—I do not understand. I asked the witness whether that was his honest view of how the Act ought to be administered, which is surely a perfectly permissible and right question.

Witness.—My reply was that it was.

His LORDSHIP.—To levy such a sum as a small house could not pay?

Witness.—No. That could not be in my mind at all. The levy on a small house would only be about £3.

Mr. ISAACS.—Here is the schedule to the Act. A house from £20 to £25 the maximum rate of charge is £3.—Witness: I don't think that would ruin them.

A house from £25 to £30 is £4, and £30 to £40 is £6?—Yes.

You have been asked a number of questions with reference to the opportunities you had of making a protest, or of recording on the minutes your views. Was it of the slightest avail your making a protest?—I soon recognised that it was no use at all.

And if you had thought that it would have been effective to make a protest you would have made it?—Certainly.

Was there any reason why, if a protest by you could have been in any sense effective, you should not have made that protest to carry out the reforms you wanted?—No.

It is suggested that you did not protest with reference to the report as to the 29th; had you divided on the question, taken your part in the division, sustaining your view that a greater number of houses should be included, but you had been out-voted?—Yes.

In answer to his lordship,

Mr. ISAACS said:—I have other gentlemen who were present at the meeting, and I am prepared to put each one of them in the box.

His LORDSHIP.—It will be sufficient perhaps if you put in one of them.

Mr. ISAACS.—My examination of Sir Edward Russell will not take much time.

SIR EDWARD RUSSELL'S EVIDENCE.

Sir Edward Russell, the defendant, was then examined by Mr. Isaacs.

Mr. ISAACS.—You are Sir Edward Richard Russell?—Yes.

You are the defendant in these proceedings?—I am.

And I think since 1869 you have been the sole controlling editor of the "Liverpool Daily Post?"—Yes.

Before that date you had been assistant-editor for some years? Yes.

Altogether I think you have worked continuously as a journalist in Liverpool for forty-five years?—Yes.

And you have a general knowledge of the public affairs of Liverpool?—Yes.

On licensing questions has the "Liverpool Daily Post" consistently and persistently taken a prominent part?—Yes.

Generally speaking—to summarise it—in favour of reform by reduction of licences and ameliorating the social condition of the people?—Yes.

So far as you have been able, have you given your energies to assist those who have had the same desire to carry out these reforms?—I have.

Co-operating with them wherever it has been possible?—Yes.

In the same way, have you used your newspaper for the purpose of bringing about the same desirable result?—Yes.

Just before the Licensing Act of 1904 came into operation, on January 1st, 1905, was it your view, from what you knew, that it was necessary there should be a reduction in the number of licences in Liverpool?—Undoubtedly.

And in your view was it necessary that as many licences as possible should be extinguished?—Yes.

And, therefore, that the compensation to be raised under the Act of 1904 should be the maximum available for the purpose of securing the extinction of licences?—Certainly.

The greater the amount of the money, the more licences you could buy up?—Yes.

In your view, was that the policy of the Act so far as you understood it?—It was the avowed policy, and I hoped it would be so worked out as to prove effective.

THE POLICY ADVOCATED BY THE DAILY POST.

In December of 1904, on December 5th, just before the Act came into operation, you wrote an article which has been read, and I only want to call your attention to one or two parts of it, and may I summarise it in this way: Were you anxious to suggest that the Act should be administered by a committee, which should be simply a committee, to consist, I think you mention in the article, of twelve, who would not be nominated in a spirit of partisanship. This, indeed, is what you say:—"How are we to guard against even this committee being nominated in a spirit of partisanship? We are not speaking exactly of political partisanship, to which, in justice to the city magistrates, they have for years been consistently superior. We are speaking, rather, of a more indefinite, but quite actual partisanship for and against liquor interests. There is a 'cakes and ale' tone of mind, and there is a Malvolio tone of mind; and, correspondingly, there are distinct sections of opinion and preference as to licensing; while between these extremes there is a much larger body of personnel and conviction in favour of reason-

able and responsible action; neither teetotal on the one side nor pro-liquor on the other." That was the view you were putting forward?—Yes.

A reasonable and responsible view?—Yes.

Then you go on to deal with another question. You say this: "Between the two opposing sections is the much more numerous proportion of the community and Bench alike who think that the Act should be made the best of." Thus, after discussing the two opposing views, you say there is a large section who think that the Act should be made the best of. Was that what you meant?—Yes.

Then you go on to say: "Our proposal is that the magistrates should at once appoint a small committee of selection to choose the, say, twelve members of the licensing authority." Did you make a suggestion that a course similar to the one adopted in Liverpool at the time of the institution of the School Board under the Education Act of 1870 should be followed?—Yes. The analogy is not exact, but if the advice of that leader had been taken this scandal would never have arisen.

I see that what you suggested was an equitable arrangement between the two parties?—Yes.

And you say, also: "It behoves the city magistrates to imitate, with a difference, the great Bushell precedent"?—Yes.

You had the difference in your mind when you wrote the article—the difference was that suggested by the same policy in the case of the Education Act. There was in the case of the School Board the consideration of the numbers of the respective religious bodies, who had each to be considered and to have their proper representation?—Yes.

Proportional representation?—Yes, and I thought that did not apply to this case.

That is what you meant by the "difference"?—Yes.

Now, I want to ask you from that, I am passing to the article of July 13th, which is the subject of the action, as far as you are concerned, did you have anything to do with the writing of that article?—No.

But as you have said before, you accept the full responsibility? Yes; I read it and passed every word.

You do not desire any protection or shelter by reason of the fact that you did not yourself write the article?—Not the slightest.

It would be your duty to examine carefully the article going into the paper?—Yes.

Did you go through it word by word?—Yes, most carefully.

And then, of course, it was published on your responsibility?—Yes.

When you had the article before you did you know who had written it?—I did.

Had you confidence in the writer?—Yes, absolute.

Did you believe he was a man whose information could be depended upon?—I knew he would not write the article without information.

Did you honestly, bona-fide, believe in the truth of the statements made in the article?—Undoubtedly.

As far as you were concerned, did that article correctly represent the views you were holding?—It did.

Had you any reason of any kind, Sir Edward, to doubt the truth of the statements contained in the article which thus came before you?—No; on the contrary.

Had you any ill-feeling of any kind or description against one of those eight gentlemen who are the prosecutors?—Not the slightest.

Are some of these gentlemen personal friends of your own?—Yes.

With whom have you been acquainted with many years, and with whom you are still on friendly terms?—Yes; in spite of their bringing me here as a "criminal" (laughter).

Did you, when you read that article, in your view, did it impute any dishonour or corrupt motive——

His LORDSHIP was interposing, when

Mr. ISAACS remarked:—I know, your lordship, I am going on the border line, and that what the article means is for the jury to decide; but the bona-fides of this gentleman is of moment. (To the witness:) Now, Sir Edward, will you tell his lordship and the jury, whether, in your view, so far as you are able to judge, are you, in this article, imputing dishonourable motives or conduct to any one of these gentlemen?—Not in the slightest degree.

His LORDSHIP.—I do not know what you mean by "dishonourable."

Witness.—I mean an action in a public matter which would denote dishonourable conduct in the person who did it. I believe that hundreds of men will do things in political situations which they would scorn to do as individuals.

Mr. ISAACS.—To use the words of the innuendo, did you intend in any way to impute——

On his LORDSHIP again interposing,

Mr. ISAACS said:—I am not enamoured of the word "intend." (To witness:) In your view, did it——

His LORDSHIP (further interposing).—When you passed the article, did you think it imputed——

Mr. ISAACS (interpolating).—Thanks; I always prefer to take my question from the Bench (laughter). (To witness:) When you passed the article, did you regard it as an attack imputing "dishonest or corrupt" conduct against any one of these gentlemen?—No.

With reference to these eight gentlemen, some of them long your personal friends, would you have passed such an article if it, in your view, had imputed dishonest and corrupt conduct?—No. Of course, I must qualify by saying that, if I thought it was the duty of the paper to denounce or expose such conduct, I might take the risk, but I should know I was doing it at the risk of libel proceedings.

If you thought it right to give it you would take the risk?—I think I would. Certainly if it were absolutely my own paper I would.

But in this case was there any such idea in your mind?—No such idea.

When you passed this article, did you regard it in any way as making a personal attack upon any one of these eight gentlemen?—No more than in any article on a debate in Parliament or anywhere. Of course, you must make personal remarks.

In your view, was it an attack upon them in any other than in their public capacity?—Certainly not.

Mr. ISAACS.—I propose to put this question, my lord. I think it permissible, but it is only my view. I propose to ask him whether he had any intention of reflecting upon them, either with regard to their honesty or imputing corrupt conduct, or anything of that character. I would submit that I am entitled to ask that.

His LORDSHIP.—What does Mr. Taylor say?

Mr. TAYLOR.—I submit it is not evidence.

His LORDSHIP.—Whether it might be evidence or not, I may make some remarks to the jury, but, having regard to the defendants, it is not unfair to put the question.

Mr. ISAACS.—I should like your lordship to bear in mind that on the question as to whether it is evidence the indictment says he did with intent "vilify and injure."

His LORDSHIP.—You know that the law presumes that is intended which is done.

Mr. ISAACS.—The law presumes a lot sometimes (laughter).

His LORDSHIP.—You do not intend to call evidence as to "intent."

Mr. ISAACS.—I think I am entitled by evidence to negative the "intent." Of course, it is not conclusive. (To Sir Edward Russell:) Did you intend in any way to impute to any one of those

gentlemen, when you passed the article, that they had been guilty of dishonesty or corrupt conduct, or any conduct which was dishonourable or which reflected upon them, otherwise than that in their public conduct?—No, I did not.

Did you intend in any way to reflect upon their personal integrity?—Certainly not.

This concluded Sir Edward Russell's examination-in-chief.

Upon Mr. Taylor's request, the cross-examination of Sir Edward Russell was postponed until Saturday morning at ten o'clock.

The court then adjourned.

THIRD DAY'S PROCEEDINGS.

SIR EDWARD RUSSELL'S CROSS-EXAMINATION.

When the Court resumed on Saturday morning,

Sir Edward Russell presented himself for cross-examination.

Mr. TAYLOR.—You have been a long time in Liverpool?—Forty-five years.

And how long connected with the "Daily Post"?—The same time.

That journal was lately amalgamated with another?—Yes.

That was before this matter which we are discussing?—Yes.

I suppose I am right in saying that the journal as now constituted has a very large circulation?—Very large.

That is common knowledge, of course. The paper reaches a very influential class of people?—I should think so—all classes.

High and low, rich and poor. I rather understood you to say yesterday that it is not your private property? It is, I suppose, owned by a company?—I have a share.

His LORDSHIP.—Is it a limited company?

Sir EDWARD RUSSELL.—Yes, my lord.

Mr. TAYLOR (to Sir Edward Russell).—Do you to-day adhere to all the statements made in this article which we are discussing?—There are points of fact which it is admitted on all hands have to be given up.

Tell me what the facts are that have to be given up?—We all know them, I think.

The comments in that article were intended, were they not, to refer to the conduct of the complainants on July 12?—Yes; and, of course, anything that had naturally preceded that conduct on July 12.

Mr. TAYLOR.—I do not quite understand what you mean?

Sir EDWARD RUSSELL.—Well, previous to that there had been rumours about the levy.

Rumours?—Yes.

When had you heard the rumours?—I cannot say.

His LORDSHIP.—It will be sufficient to say, "about the conduct of these gentlemen with reference to the levy."

Mr. TAYLOR (to Sir Edward Russell).—You made an affidavit on July 24 which, no doubt, expressed accurately your view. It was made by you and Mr. Jeans, and you say: "We have read the affidavit of Mr. Isaac Morris, sworn on July 21, and in answer thereto we most respectfully submit that the comments contained in the leading article of the 'Liverpool Daily Post and Mercury' for July 13, 1905, and complained of herein, have relation solely to the conduct of the said justices on the occasion therein mentioned."

Sir EDWARD RUSSELL.—That is right.

Mr. ISAACS.—Do you mind finishing the paragrah, Mr. Taylor?

Mr. TAYLOR (reading).—"And cannot prejudice the said justices in the performance of their duties at the transfer sessions." That is the occasion on which you were commenting, and has relation to their conduct at that meeting with respect to the levy?—Yes.

I gather you did not write this article?—That has been in evidence.

Did you go through it?—Certainly, in the regular course of my nightly work.

Was that on the night of July 12th?—Yes.

Can you tell the jury when you went through it?—Do you mean at what o'clock?

Yes.—Between eleven and one; or perhaps I should say between ten and one.

Was that the first you heard of it?—Yes.

On that day?—Yes.

I suppose you were in your editorial office?—No; at my own house.

With whom?—My wife.

We don't want, of course, to inquire into this sort of conferences.—It was not a conference. My wife sits in the room when I do my work at home, and she was there.

But did you go through the article with anybody?—With nobody.

His LORDSHIP.—I think what Mr. Taylor means is, Was it brought to you by the author, or was the paper or draft——

Sir EDWARD RUSSELL.—The proof.

His LORDSHIP.—The proof was sent to you?—It was brought to me by the office boy.

Mr. TAYLOR.—Without any observation?—Certainly.

And left for you to read there?—The office boy waits.

You read it through, and pass it or not according to your judgment?—The proof did not come alone; all the proofs ready at that time were with it.

No member of your staff was there for you to refer to?—Nobody else was in the house at the time.

I suppose there would be the usual bulk of matter altogether there?—Yes, I think so.

You don't perhaps recall?—I assume it would be like other nights.

And then you go through it; it would be handed back to the office boy, and he takes it down, and next thing is it appears in the paper?—Yes, with any correction I may make.

Did you make any?—I don't remember; I don't think I did.

THE WRITER OF THE ARTICLE.

Who wrote this?—Mr. Farrie.

I suppose you are familiar with Mr. Farrie's writing?—He has been with me ever since he was seventeen.

I assume you have every confidence in Mr. Farrie?—I have.

His accuracy?—Yes.

His fairness?—Yes.

And his mode of inquiry into and testing the information he gets?—Yes; I have a good opinion of those.

I gather you yourself made no inquiry?—No; I had the proof.

As far as you know, no independent inquiry was made?—No, I know nothing about that. Of course, I was profoundly sensible of the importance of it.

A GRAVE REFLECTION.

In what way?—As a reflection on the eight members of the Licensing Committee.

His LORDSHIP.—You don't deny, of course, that it was a grave reflection.

Sir EDWARD RUSSELL.—A grave reflection.

Mr. TAYLOR.—"Grave," did you say?—Yes.

Any censure that passes into your paper after your assent would naturally be regarded as a grave matter?—According to the subject.

Now, as to the article. Is Mr. Farrie here?—Yes.

I see it says:—"There was a meeting of the Licensing Committee to fix the rate of the levy." That, as you say, was the subject matter on which you were commenting?—Yes.

Had you known about the composition of the Committee?—Of course. I wrote on the 20th of January, on the appointment of the Committee, and expressed a fairly satisfied view as to it.

Did you know the names of those gentlemen then?—Yes; they were announced in the paper. I had not then heard the evidence of Mr. Isaac Morris in this case, or I should have written more strongly.

You mean you had not, on the 20th of January, heard the evidence that he has given now?—Yes.

No; I suppose not (laughter). I see you said:—"To constitute a Licensing Committee for Liverpool that will meet with general acceptance and approval is no easy matter, especially when the general body of magistrates by whom it is to be nominated is politically so lop-sided as the Liverpool Bench. There is all the more reason for congratulation, therefore, when it is found that moderate counsels have prevailed, and that, though there may be men on the Committee whose presence strong partisans would resent, the personnel of the Committee is, on the whole, reassuring"?—That was my view.

On consideration of those names?—Yes.

Mr. TAYLOR (reading from the same article): "One may conclude that the desire of the whole Bench has been to secure a committee that will be both thoroughly representative and judicial, and to exclude as far as is practicable any possibility of fanaticism in one direction or the other."—That I believed at the time.

You knew, I suppose, when the names of those gentlemen were mentioned exactly their shade of politics?—No; several of the eight I scarcely knew.

But you had no doubt, I suppose, that they were Conservatives?—I don't think I should have had any doubt. I did not know they had been chosen upon a special round of the Conservative Club.

Mr. TAYLOR.—I quite understand that (laughter).

Were you kept informed of the proceedings of the Committee with reference to the selection and scheduling of the houses?—No.

You knew nothing about that?—Nothing whatever.

No information was given to you about that?—No information.

Well, I will take it that the first——

His LORDSHIP (interposing).—Are the Press represented at the meetings of the Licensing Committee?—No.

At the meetings of the justices—the whole body—are the Press admitted?—Yes, my lord, as a rule; but, of course, the justices sometimes retire to their room.

And the reporters are, of course, admitted when the evidence is heard in court?—Yes; but, as a matter of fact, in the giving of evidence as to these public-houses reporters were not present.

Mr. TAYLOR.—But what I am asking you is, had you any information about this scheduling?—Nothing whatever.

Nothing that would convey to Mr. Farrie or to anyone else the scheduling of the houses in March?—No. I should say that Mr. Farrie had no information; he is simply a leader-writer.

You mean he had no special authority to get information?—No, certainly not. Like any other man, if he hears anything likely to be of interest, as you do in London at the Reform Club, or Carlton Club, you would naturally take it to your editor.

Where, of course, it ought to be checked?—Certainly.

Now, going back to the article, of course you did not know, for instance, anything about that figure of £17,500?—No, I think not.

Did you suggest, by any note, that this figure should be examined into?—I did not.

You assumed it was accurate?—I assumed it was accurate.

Why?—Because I gathered, from my knowledge of Mr. Farrie, and from the tone of the article, that he had written upon information.

I see. Now I want to ask your attention to another matter. It says:—"A very modest programme is to be proceeded with for the present year until a sufficient expenditure can be raised." Did you suggest any inquiry about that?—No.

Did you know the total that could be raised?—Yes; it was frequently mentioned in various discussions.

You also say that the total that should be raised was about £35,000?—I should like to say that there were various discussions when the Bill was before the House, and it was a frequent argument on one side——

Mr. TAYLOR.—I am not asking you about arguments. I am asking you if you know the full amount.

Mr. HORRIDGE.—I submit that is a proper answer.

His LORDSHIP.—I don't see why he should not say what were his reasons.

Sir EDWARD RUSSELL.—That sort of thing was in the mind of those who are interested in the passing of the Act, and it was said, "We shall have about that amount in Liverpool, and thus we can freely extinguish public-houses and do no private wrong."

Mr. TAYLOR.—That was about £35,000?—About that.

His LORDSHIP.—You don't pledge yourself to the exact figure?—No.

I suppose you did not know whether it was right about the "single full licence" or not?—No; I assumed that.

Mr. TAYLOR.—I see there is a sentence—"They have picked out a few of the '69 beerhouses in the A and B divisions for abolition under the Act." I suppose that does not refer to what was done at the Committee at all on the 12th July?—No. Of course, I assumed that that was part of the information—which it was.

Yes, no doubt. Well, I may take it generally that you did not order any inquiry to be made into the figures at all?—No.

You took them all?—Yes.

You say, "The matter stands thus: For the extinction of the selected licences—licences which the Bench have decided ought to be extinguished forthwith in the interests of the community—a sum of not less than £21,000 is required." You accepted that?—Yes.

£21,000 for the extinction of licences in that year?—Yes.

Mr. TAYLOR (reading).—"Now the Licensing Committee decline to levy a larger sum than £17,500." That is what you were condemning?—Yes; on the principle that from the first we had plainly advocated the levying of the full levy.

Yes. "There is only one explanation of this state of affairs." What is the state of affairs you mean?—As stated in the article.

I should like it a little more clearly.

His LORDSHIP.—That is the answer. It is perfectly obvious what it means. The state of affairs is the state of affairs which have been detailed. (To the witness): That is what you mean?

Sir EDWARD RUSSELL.—Yes; that is what I mean.

Mr. TAYLOR.—You mean what is set out here?—Yes.

And that is what you were passing judgment on?—Along with my whole knowledge of the case.

Did you know at the time that you passed the article that the information had been obtained through talk in a smokeroom?—No.

His LORDSHIP.—I think it is quite clear he did not. He has told us quite frankly that he knew nothing of what had taken place. (To witness): You knew nothing of what had taken place except until you got the article?—No.

Mr. TAYLOR.—I should like to ask you on that, this being a grave censure, do you think it fair to those magistrates censured to let it pass into your paper without making some inquiry or ordering some inquiry?—I think it was quite fair, and I have seen nothing since to make me think there is any moral injustice in the article.

Very well; you adhere, therefore, to what has been written?—Practically, in its moral application.

Yes; and I suppose I may take it you adhered to it on the 13th July, and from that date downwards?—Yes. The fact is that on the 12th July I had a great shock.

I am very sorry to hear it. What was it?—The shock was this. Throughout the administration of Sir Thomas Hughes this city for the first time for many years had confidence in the licensing bench. When the change was made by the Act I wrote an article advising arrangements which would secure the continued confidence of the community. When I heard that this vote had been taken, when I saw that the vote was a party vote, I trembled for the great reform which fifteen years ago Sir Thomas Hughes established.

That is the shock?—That is the shock.

And that is why you passed the article?—That is why I passed the article.

You have heard the evidence given here?—Yes.

Do you really suggest that by the vote which these men gave that day they intended to hamper and obstruct the working of the Act after what you have heard in this court?—Yes, I think I can.

You seem to hesitate. You said, "I think so"?—The evidence in this case has confirmed my view, because I find by their common confession these eight gentlemen always voted together, and nearly always against Sir Thomas Hughes

Mr. ISAACS.—The words of the question are not the words of the article. I am not suggesting that they were, but I thought your lordship understood so.

His LORDSHIP.—No; the words used in the question are "hamper and obstruct."

Sir EDWARD RUSSELL.—I must say I thought Mr. Taylor was reading from my article.

Mr. TAYLOR.—I will ask the question over again. (To Sir Edward): Do you think that by their vote of that day they were intending to obstruct and hamper the working of the Act?—Meaning the working in the full extent that I desired—I mean the full levy. I say that in every community in this country, and above all places Liverpool, it is obstructing the working of this Act if they do not levy the full levy. It is preposterous to think that Liverpool should not pass the whole levy.

You mean to say they were hampering it by not passing the full levy?—Yes, and of course, a fortiori, in not passing the compromise of three-fifths.

Mr. TAYLOR.—Oh, yes. But you knew nothing about any estimate that had been formed?—As to what?

As to, to use the words of your article, the sum that would be required for the extinction of licences?—I took the facts in the article.

Supposing you had been informed while you were going through that article that the sum required for the extinction of licences in

1905 would be only about £15,000 plus expenses, would you have said the same thing?—The eight gentlemen did not know that themselves.

If you had been told that £15,000 was the amount required for compensation and £18,500 the amount levied, would you have passed this article?—If I answer yes or no, how am I to get out the fact that the eight gentlemen did not know?

His LORDSHIP.—You may say you cannot answer that question if you like.

Mr. ISAACS.—I think Sir Edward Russell is entitled to give his answer and a full explanation.

His LORDSHIP.—Oh, yes. (To Sir Edward:) You may give your answer. You should say yes or no, and then you may give an explanation.

Sir EDWARD RUSSELL.—With that guarantee from your lordship I will. "Yes" or "No" may lead to anything. It might give a wrong impression.

Mr. TAYLOR.—Supposing the information given to you had been that only £15,000 was required to extinguish those licences in 1905, and that by their vote the magistrates had raised £18,000, would you have passed these words?

Sir EDWARD RUSSELL.—Perhaps not the exact words. What I should have said was that it was a pity they did not raise the full amount. May I ask, Mr. Taylor, whether your question had reference to the contingent Somerset House settlement?

Mr. TAYLOR.—No; I merely put the question to you.

His LORDSHIP.—The question is based upon £15,000 being required.

Sir EDWARD RUSSELL.—Including all those cases which had to go to Somerset House?

Mr. TAYLOR.—I do not say that.

Sir EDWARD RUSSELL.—That is very important.

His LORDSHIP.—It is a matter of argument whether the policy is right. But assuming it to be right?

Sir EDWARD RUSSELL.—I should probably have said in that case, as Mr. Henderson said about his private affairs, that I should have felt bound to provide for the liabilities.

Mr. TAYLOR.—You mean it would have been wiser to provide for them?

Sir EDWARD RUSSELL.—Certainly; if that point had arisen.

Mr. TAYLOR.—Assuming that £21,000 was the sum required to extinguish the licences decided on by the whole Bench?

Sir EDWARD RUSSELL.—You mean the whole 150 magistrates?

Mr. TAYLOR.—Yes. The whole Bench scheduled so many houses to be extinguished.

Sir EDWARD RUSSELL.—But they did not.

His LORDSHIP.—I think we shall get into difficulties with that question, Mr. Taylor.

Mr. ISAACS.—It is contrary to what happened.

Mr. TAYLOR.—Well, I won't have any confession of that kind. (To witness:) Assume that £21,000 was, in fact, required to extinguish licences settled somehow; and assume that the members of the Committee knew that figure——

Sir EDWARD RUSSELL.—Which is, of course, for the sake of argument?

Mr. TAYLOR.—It is all argument in this case, and nothing else.

Mr. ISAACS.—I am delighted to hear that from you, Mr. Taylor. I will remember that.

Mr. TAYLOR.—I have heard nothing else yet.

Mr. ISAACS.—I agree; it is all argument.

Mr. TAYLOR (to witness).—Assume that they knew that figure, and only voted £17,500, would you say that was right or wrong on their part?

Sir EDWARD RUSSELL.—Wrong.

Why?—Because they ought to provide for their liability.

It would be a breach of duty?—I should think so—a failure of duty anyway.

His LORDSHIP.—A great failure of duty?—I should think so.

Mr. TAYLOR.—And if they did it to help a friend it would be making the moral character of it very much worse?—Naturally; that is a commonplace in morals.

I suppose you agree, then, that that would be acting by the magistrates corruptly?—Are you speaking of an individual friend?

I don't mind—a friend they are helping by the wrong vote?—It makes all the difference. If Mr. Oulton knew John Smith (laughter)——

His LORDSHIP.—No, no.

Mr. ISAACS.—I think there should be some consideration for Sir Edward. I think that what he was going to say was a perfectly fair and legitimate answer. He has been asked to admit something which, of course, involves a sense in which you use words, and he is going to explain it; that is all.

His LORDSHIP.—I think the right hypothesis should not refer to a particular man. I think with that qualification——

Sir EDWARD RUSSELL.—I mentioned Mr. Oulton because his high character shows that he is the last man to be considered in such a case. But I will suppose A.B. on that select committee knew C.D., a licence-holder, who could in any way profit by his vote. If A.B. gives his vote in reference to the interests of C.D. he is a dastard.

Mr. ISAACS.—Quite right.

Sir EDWARD RUSSELL.—But I should say that if A.B. is a member of a large political body which is in definite and continuous alliance with a certain trade interest, and if coming to conclusions with any sort of conscience they think it is for the public good that that trade should be supported and should have its way, then I don't call that personal dishonour, even if their vote proves to the advantage of that trade.

His LORDSHIP.—If A.B. gives his vote to C.D. to help him that would be corrupt?—Personal acquaintance, my lord.

His LORDSHIP.—Yes.

Sir EDWARD RUSSSELL.—I said he would be a dastard.

His LORDSHIP.—The question asked was whether it would be corrupt?

Sir EDWARD RUSSELL.—It would be corrupt.

His LORDSHIP.—But if——

Sir EDWARD RUSSELL.—I said: "But if a large political party is in continuous alliance with a particular trade, and if that political party considers, according to its conscience, that it is good for the country that that trade should have its way——

His LORDSHIP.—Then it would not be corrupt?—Then it would not be corrupt. I should not like to do it; but it would not be corrupt.

Mr. TAYLOR.—And if a comment was made in a public paper in the terms of the answer you have just given you consider it perfectly fair?—Yes.

Do you know that this committee were delegates of the whole body of justices?—Yes.

With certain special powers of their own, delegates with instructions?—Of course there are special limitations in the Act.

His LORDSHIP.—And there were in the report that was adopted. I mean their line of conduct was pointed out?—I did not know of that; I have heard of it in this case.

Mr. TAYLOR.—The report of the 22nd March says:—"The Committee were to proceed carefully this year in order to gain their experience without risking any possibility of exceeding, or even

coming near, the maximum amount of the funds at the disposal of the Compensation Committee." Supposing you had known that that was the instruction from the body that had given the powers, what would you say about this vote?—I should still have been struck by the figures of the voting.

What figures?—The majority and the minority. I should have asked myself, Why does the majority go one way and the minority another?

But in the case of a body with those instructions do you think it would have been right to vote for the maximum if it was not required for the purposes of the year?—I should say certainly I would vote for the full maximum.

With those instructions?—It is a new point to me.

Is it difficult to answer?—How am I to account for the gentlemen in whom I have confidence having given that vote? How am I to account for it having been moved in the Committee? You would think the chairman would have said it was out of order.

But I am asking you, without asking you to explain their conduct, what was your view of what was right with those instructions.

His LORDSHIP.—It is rather difficult to ask a man to put himself in the position of others.

Mr. TAYLOR.—Perhaps it is.

RE-EXAMINATION OF SIR EDWARD RUSSELL.

Mr. ISAACS.—You have defined, or described, what you mean by corrupt motive or corrupt conduct, and, bearing that description in mind, I put to you the question again with reference to this article and the broad facts that we are dealing with in this case. In your view, when you passed that article, did it impute corrupt conduct or motives to those gentlemen?—No.

And whether it did or not, had you any intention of imputing any such corrupt conduct to them?—No such intention.

When you speak of a reflection upon the gentlemen named in the article had you any intention of reflecting upon them otherwise than in respect of their conduct in relation to the licensing matters with which we have been dealing?—As politicians.

In your view was it of importance in the first year of the Act that the levy should be as large as possible?—Especially important in the first year.

And as we know this was the first year?—Yes. (After a pause:) I think I had brought forward that point in the article of December 5th.

December 5th, 1904?—Yes.

And you used words which I prefer to read from the article itself, rather than to give any paraphrase of my friend, if he will

forgive me for saying so, or of my own. In your view did the acts of which we have heard tend rather "to hamper and obstruct" than to effect "a sorely-needed reduction" of licences?—Yes.

Mr. ISAACS.—These are the words, your lordship, which follow "hamper and obstruct": "To effect without gross injustice and discontent a sorely-needed reduction. That can be done by levying the maximum allowed by the Act." (To witness:) That maximum would allow you to reduce the number of licences to the extent the money would go?—Yes.

And, in your view, were the conditions such that it was desirable that the reduction should go as far as it possibly could?—Certainly.

That was the pivot really on which your policy had turned?—Yes, from the very beginning.

And, further, was the effect of the Licensing Committee's decision to make that rate of reduction less than it had been in the preceding year?—I believe it was.

EDITORIAL RESPONSIBILITIES.

As editor-in-chief, Sir Edward, are you influenced in the passing of articles by your knowledge of the writers?—I am glad to say, no.

You form your opinion as to the policy from your own views?—Yes; of course, in such matters one would naturally consider the article and judge of it partly by one's knowledge of the general conduct and character of the man.

It was suggested by my friend that you should not have passed this article without making further inquiries. That is the suggestion. Now, you knew that the article came from Mr. Farrie. In your view, was Mr. Farrie a man of responsibility?—Certainly.

A man upon whom you could rely?—Yes.

As far as you could judge, he was not a man to take his information from the man in the street?—Certainly he was not; and if I had to publish that article to-day my alterations would be very slight and insignificant.

And do you know of any better means of information to Mr. Farrie than the information supplied to him by the magistrates or by some of the magistrates present at the Licensing Committee?—No; it was the best possible.

Have you known Mr. Henderson for a number of years?—A great many years.

And is he a gentleman upon whose opinion you would rely as to matters of which he is cognisant?—The whole city would, and does.

And can you now conceive, with all the knowledge we have at the present moment, of any better means of information that you could have sought than the information which you in fact had when the article was written?—I cannot.

And, of course, at that time, as I understand your evidence, you will correct me if I am wrong—you did not know the facts to which Mr. Isaac Morris and some other witnesses have deposed in this court as to the way the Committee was constituted?—No, it was, in fact, rather the reverse of what I had hoped.

Yes, you had hoped for a more moderate view?—And a less party idea in the composition of the Committee.

That is what I meant. Have you dealt with the licensing question without regard to the politics of either party?—Absolutely. If I may say so, I should like to say this—and it will be confirmed by everyone who knows me and who knows the paper—that throughout my life I have gone for the noble conduct of both parties, and I lament sincerely that either party should have a degrading alliance; and that is known to my fellow-citizens.

Mr. ISAACS.—I think, after that last answer, Sir Edward, there is nothing further I can put to you.

SIR WILLIAM FORWOOD'S EVIDENCE.

Sir WILLIAM BOWER FORWOOD was the next witness. He was examined by Mr. Horridge, and said he had been Mayor of Liverpool and was senior member of the City Council, of which he had been a member for thirty-seven years. He was also chairman of the County Quarter Sessions, chairman of the Quarter Sessions Bench, and chairman of the Licensing Committee of the county.

Mr. HORRIDGE.—Have you for many years taken a deep interest in the question of temperance reform in Liverpool?—Yes, I have.

How long have you known Sir Edward Russell?—About forty years.

And during that time am I right in saying he has been a great power in favour of temperance reform?—Yes. I think he has done a great deal to create and maintain a sounder and healthier public opinion on temperance matters.

I may take it, Sir William, that you have not only in your position as chairman, not only as Mayor and member of the City Council, but also in considerable work which you have done in connection with committees—that you have got to know the whole of the requirements and wants of the city of Liverpool?—Yes.

Is it your opinion that the number of licences existing in Liverpool is considerably above what ought to exist?—In my opinion, yes.

And that any steps taken to reduce that number is a step in favour of the purity and well-being of the city?—Certainly.

And it rather follows from what I ask you, as long as you can properly do so the more licences you reduce and the quicker, the better?—Yes. I think Sir Edward Russell has done a great public service in temperance matters, in licensing matters in Liverpool, and I don't think it would be possible for Sir Thomas Hughes to do what he does unless he were supported by a healthier public opinion than prevailed some years ago.

It is not uncommon, I think, to levy the full amount. I think in the adjoining Quarter Sessions of Lancashire——

Mr. TAYLOR.—I object.

His LORDSHIP.—It is obviously a matter of policy.

Mr. TAYLOR.—I don't ask anything.

This concluded Sir Wm. Forwood's evidence.

SHORTENING THE EVIDENCE.

Mr. ISAACS.—I want, if I possibly can, to shorten the evidence. I will put any one of the other magistrates who voted with the six in the box if my friend desires. Otherwise I propose to take the course he did and not call any more, so as to save repetition. After what Sir Edward Russell has said, I will tender Mr. Farrie in the witness-box, if my friend desires.

His LORDSHIP.—I think the better course would be to put him in the box, ask if he wrote the article, and leave him to Mr. Taylor.

Mr. TAYLOR.—I take it that the facts are as stated by Mr. Henderson.

Mr. ISAACS.—Certainly.

Mr. TAYLOR.—I am satisfied.

MR. CHARLES W. JONES'S EVIDENCE.

Mr. CHARLES W. JONES, a Justice of the Peace since 1892, and a member of the firm of Messrs. Lamport and Holt, was then called and examined by Mr. Isaacs.

You are a member of the Licensing Committee, and one who voted in the minority on the question of the rate of levy to be raised?—Yes.

You took the same view as Mr. Henderson?—Yes.

You have a large knowledge of Liverpool social conditions, and in your view it is necessary that the number of licences should be reduced?—Yes.

Is it, in your view, necessary that they should be reduced as quickly as possible consistent with justice to those who hold the licences?—Very strongly.

Is it, in your view, necessary that the full amount should be raised under the new Act?—Absolutely. I advocated it from the first.

So as to enable you to carry out to the fullest extent the provisions of the Act?—Yes.

By the Act your powers had been curtailed, and you could only then reduce licences to the extent of your compensation?—Precisely.

So you wanted to go to the full extent that the law allowed?—Certainly.

To levy the full compensation and buy up houses to that extent?—Certainly.

Assuming that the desire was to administer the Act to the full extent possible, was there any other course, in your view, than levying the full rate?—No other course.

You agree with the view put forward by Mr. Henderson?—I do.

Mr. ISAACS.—I see that on July 12, after Mr. Henderson's proposal that the maximum charges should be levied was lost, you moved, and Sir Thomas Hughes seconded, a compromise of three-fifths?

Mr. JONES.—Exactly. Because I thought half a loaf was better than no bread. I wanted to get as much as we could, and saw that there was no chance of getting the eight magistrates to agree to more than three-fifths; but I thought it was possible they might agree to that.

If you could not get the whole, you thought three-fifths of a loaf was better than half?—Certainly.

And could you see any reason why the compromise should not be carried?—Not the slightest.

So far as you are able to see, could it possibly create an injustice to anyone?—Not the slightest.

So far as your opinion goes, could it do anything but good by helping the administration of the Act?—It would have done a great deal of good; it would have given us £5,000 or £6,000 in hand to begin the new year with.

In your view was that a matter of great importance?—Absolute importance.

MR. CHAS. W. JONES CROSS-EXAMINED.

Mr. TAYLOR.—You have £4,000 in hand?—Yes.

But you wanted £5,000 or £6,000?—I wanted £35,000.

As much as you could get?—Yes.

I daresay you would like to borrow as well?—No; but I wish the levy had been twice as large.

That was why you gave the vote?—Certainly.

Mr. ISAACS.—It is said you have £4,000 in hand. At the time when this was passed did you know that you would have £4,000 in hand?—No, we did not.

This is speaking after the event?—Exactly.

Mr. ISAACS.—Many of us are wiser after the event.

This closed the case for the defence.

POINT OF LAW.

His LORDSHIP (addressing Mr. Isaacs).—As regards the point of law that you raised, there is a further case of the King against Hunt, in which Lord Ellenborough says, "It is enough to prove publication. If the indictment charges that the defendant did or caused to be done a particular act, it is enough to prove either. The distinction runs through the whole criminal law."

Mr. ISAACS.—I agree.

His LORDSHIP.—"And it is invariably enough to prove so much of the indictment as shows that the defendant has committed a substantive crime."

Mr. ISAACS.—I quite agree with that. For the point I am raising I have not found any definite authority; I do not think there is any definite authority. I appreciate the application to a principle; but I don't think it touches the precise point. I know of no authority, and I am not speaking with any confidence upon it. All I want to do is to preserve the point, the point being——

His LORDSHIP.—That they have got to prove all the innuendoes?

Mr. ISAACS.—Which have been charged, yes. Not all the innuendoes in the various counts.

His LORDSHIP.—Take one count.

Mr. ISAACS.—Take one count. Suppose your innuendo——

His LORDSHIP.—The innuendo in a particular count——

Mr. ISAACS.—That is all.

Mr. TAYLOR.—All I have got to say is that the principle stated in this case more than covers the point spoken by my friend. If I follow the case your lordship has stated, it is a charge, and there are two intents——

His LORDSHIP.—It seems to me to be stating it wider here. The distinction runs throughout the criminal law. You say it is enough to prove that the words were used, and that they had a defamatory meaning.

Mr. TAYLOR.—Yes, my lord.

His LORDSHIP.—And if that is so, do you not prove that all is defamatory?

Mr. TAYLOR.—Yes.

Mr. ISAACS.—I have not formed a very definite view.

His LORDSHIP (to the jury).—Gentlemen, fortunately in this case if I am wrong in law the procedure allows of my being put right. In many criminal cases it could not be done; there is no sort of appeal. There is an appeal in this case; therefore, if I rule wrongly, the court above will put me right. It is a great satisfaction.

MR. RUFUS ISAACS SUMS UP.

Mr. ISAACS.—That is the case, my lord. Addressing the jury, he said:—We have arrived now at the end of the evidence, and we are now entering upon the concluding stages of this important case. As I told you yesterday, I do not intend to repeat to you any of the observations that I made to you yesterday in opening this case, because I took up a good deal of time in dealing with it, and I am glad to say I had your complete attention during the time I was addressing you. Therefore, I shall not travel over the same ground, because I am quite sure whatever I said to you yesterday will be borne in mind by you—will be weighed and considered by you with all that care and attention which you may, in your wisdom, think the observations I made to you merit. I left out of my address to you yesterday one important element, particularly reserved it in my mind to be dealt with by me when I came to address you at the end of the evidence. The point is with respect to the plea of justification and the plea of "not guilty." I do not intend for one moment to avoid dealing with any point, but, so far as I am able, and paying especial and particular care and attention to the cross-examination by my learned friend, Mr. Taylor, although I may not have the wisdom or foresight quite to calculate the effect of the points that he intends to make in addressing you, yet he has given me indications of the views which will be presented by him when he comes to reply upon the whole case. I have had indications during the case as to the views which at any rate were passing through the

mind of my lord, and which are made for the purpose of giving me an opportunity of replying to them, and of either convincing him upon the particular point or of convincing you. I am certain my lord will not think I am wanting in respect to him when I say, with the greatest deference, that it is more important that I should convince you (the jury) in this case than that I should convince him.

His LORDSHIP.—Upon the question of facts, much more important.

Mr. ISAACS.—Certainly. But, of course, I am going to address myself both to my lord and to you (the jury), because I should desire if I could to get the benefit of my lord's views in my favour, either upon the law or even upon the views of fact. It has been said by judges that in these matters the juries are the judges really, on this question of libel, of both law and fact. I am content to take it in a rather more limited way.

His LORDSHIP.—I think that means law as to construction, and upon that point the judge is not to rule as to construction; it is for the jury. If it were a written agreement it would be for the judge to construe it; but in the case of libel it is absolutely for the jury.

Mr. ISAACS.—It is in that limited sense that it is right to set it, and I quite assent to the view my lord has indicated. The ultimate responsibility of the verdict in this case is and must be yours, and yours only. Therefore, I venture to say in his lordship's presence, and knowing quite well that he will agree with the view I am taking upon this point, that he will not misconstrue any words—therefore it is so much more important I should convince you who have to give the verdict than my lord, who has simply to sum up and to state the law. When you come to consider the article, and to say whether you think it is one to found your verdict upon, to find a verdict of "Guilty" against Sir Edward Russell, you must not be led into minute or microscopic criticism of passages in the article, isolated passages, or into errors or inaccuracies with regard to some of the facts. It is not a matter of law, it is a matter fact. It is for the very reason that judges and lawyers are rather given to these more minute and microscopic criticisms and statement, from their training, from their habits of mind, engendered by the education of the lawyer, partly from the fact that during his whole career the lawyer has learnt to be precise. And for the reason that lawyers do take these views, and that judges were too prone to take these views, Parliament—that is, the people of the country, came to the conclusion that the law should be altered, and that these vindications should be removed from the sphere of the lawyer, however eminent, and placed in the more broad-minded care, in this connection, of the jury. It was for the very reason that views were taken which were too narrow in dealing with a matter of this kind, not broad

enough, having regard to the importance of the subject, not elastic enough, that the Act was passed which altered the law. From the time of Fox's Act, as it is called, passed in the reign of George III., the position has been altered and the whole burden of responsibility of dealing with this question is taken from the judge and imposed upon the jury, because it is felt that, in this connection, and in dealing with this matter of the liberty of the subject, which carries with it also the liberty of the Press and the liberty of free and independent criticism of people, however high their station may be, is safer in the hands of the jury than in the hands of the Bench. Gentlemen, upon those principles our Constitution rests, and upon those principles Sir Edward Russell is entitled to be tried, and must be tried; and it is precisely because I was anxious to draw your attention to the fact that the principle of law governing these matters, if it be indeed a principle of law at all, is that you must look broadly at the article which is the subject of criticism—very broadly; and let me make a further observation—not scanning the article too closely, not criticising it too minutely, with the desire of being able to convict, but rather examining the article with the desire that you should be able to acquit. That again is a matter which has been laid down, and which has been the view of our great judges upon this point. Again I turn to the words of the judge, because I do feel that they properly carry more weight than words which I, as an advocate, may by addressing you, and that they are words of authority which bind the court, and which stand in our law-books as a guiding authority in matters of this description. There is a well-known case—the Queen against Sullivan and Piggott—where there is a very excellent statement of the law upon the subject. It was a case before Mr. Justice Fitzgerald, who said, "Political or party writing when confined within proper and lawful limits is not only justifiable, but is protected for the public good, and such writings are to be regarded in a free and liberal spirit." The case was one of seditious libel, but the observations apply equally to this case, which is of a similar character. "A writer may criticise or censure the conduct of a servant of the Crown or the Acts of a Government. He can do it freely and liberally, but it must be without malignity, and must not impute corrupt or malicious motive. With the same motive the writer may criticise the proceedings of a court of justice and of individual judges. Nay, he is invited to do so, and to do so in a free, fair, and liberal spirit. The law does not seek to put any narrow construction on the expressions used, and only intereferes when plainly and deliberately the limits are passed of frank and candid and honest discussion. It was truly said the liberty of the Press is dear to all of us, and sure I am that, although that liberty may be abused, its true freedom never will be diminished or endangered so long as you, the grand inquest of the country and the petite jury, stand between the Press and arbitrary power. Lord Kenyon has quaintly said, 'a man may publish whatever a jury of

his fellow-countrymen think is not blameable.' In all ordinary cases the facts are for the jury and the law for the judge, but in the cases of libel, and with a view to the true freedom of the Press, the law casts on the jury the determination of both law and fact." That is the passage which I think my lord had in mind. "You are to determine whether or not the publications in question are or are not seditious libels." For the purpose of this case, we, of course, leave out the word "seditious."

His LORDSHIP.—And use the word "defamatory" instead of "seditious"?

Mr. ISAACS.—No, you leave out the word "seditious," and it would read, "you are to determine whether or not the publications are or are not libels. I desire to impress this upon you in the plainest language. You are the sole judges of the guilt or innocence of the defendant. The judges are here to give any help they can. But the jury are the judges of law and fact, and on them rests the whole responsibility. In this sense the jury are the true guardians of the liberty of the Press" That, I think, supports by authority the view which I was putting to you this morning, and which I referred to yesterday to some extent. There is a further passage on page 50—"The intentions of men are inferences of reason from their actions where action can flow but from one motive and be the reasonable result of but one intention. Now, I would invite you to carefully examine these articles. You should deal with them in a broad and candid and liberal spirit, and subject them to no narrow or jealous criticism. In considering them you should recollect that there is no sedition in censuring the servants of the Crown, or in just criticism of the administration of the law, or in seeking the redress of grievances, or in the fair discussion of all party questions. In considering these you should remember that you are the guardians of the liberty and the freedom of the Press, and that it is your duty to put an innocent interpretation on these publications if you can." I think you will agree with me that what I said to you as to what was the law before I read this judgment is borne out to the letter by the passage which I have read in this judgment of Mr. Justice Fitzgerald. It suggests, in language which must be much more authoritative than any I can use, the duty of the jury to consider the matter in no narrow or jealous spirit, in no illiberal sense of striving to find something on which you can hang a conviction, but rather the reverse, and with the desire which must animate all high-minded and honourable men of seeking, if they can, to place an innocent interpretation on the article instead of a guilty one. There is one further passage on page 59: "I invite you to deal with this case, which is a grave and important case, in a fair, free, and liberal spirit. In dealing with the articles you should not pause upon an objectionable sentence here or a strong word there. It is not mere strong language, such as 'desecrated court of justice,' or tall language, or turgid, that should influence

you. You should, I repeat, deal with the articles in a free, fair, and liberal spirit." See how careful this learned judge is to impress that upon the jury. (Reading): "You should recollect that in public political articles great latitude is given, dealing, as they do, with public affairs of the day. Such articles, if written in a fair spirit and bona-fides, often result in the production of great public good." Observe what the learned judge said, particularly with reference to some discussion which took place, and which I dealt with yesterday, on the question as to whether bona-fides had anything to do with the matter under discussion. (Reading:) "Therefore I advise and recommend you to deal with these publications in a spirit of freedom, and not to view them with an eye of narrow criticism. Again I say you should not look merely to a strong word or a strong phrase, but to the whole article, and, so regarding each article, you should recollect that you are the guardians of the liberty of the Press, and that whilst you will check its abuses you will preserve its freedom. You will recollect how valuable a blessing the liberty of the Press is to all of us, and sure I am that that liberty will meet no injury, suffer no diminution, at your hands. Viewing the whole case in a free, bold, manly, and generous spirit towards the defendant, if you come to the conclusion that the publications indicted either are not seditious libels, or were not published in the sense imputed to them, you are bound, and I ask you in the name of free discussion, to find a verdict for the defendant." That pronouncement of that judge is, I think, one of the noblest productions of our English bench which are handed down for all time; the emanation of a great mind viewing the liberty of the subject and of the Press in the right spirit, in the words that he uses, "in a bold, free, manly, and generous spirit towards the defendant." That is the view which you are invited to take by that learned judge in the charge which he made to that jury; that is the spirit in which you are asked to approach a case of this description, and that is the principle on which, in my humble judgment, you should deal with this case. I will now proceed to deal with the article itself and make a few observations I think it necessary to make. Really, there are two broad questions, two main questions, involved. Your answer to either of those questions will entitle the defendant to a verdict of "Not guilty"—if you answer either of them in the way I am going to suggest. It is not necessary that you should come to the conclusion that both these questions should be answered favourable to the defendant; it is only if one of them should be answered in his favour. Although the question will not be left to you, it will be for you to find a general verdict of either "Guilty" or "Not guilty" in this case as you may think right.

His LORDSHIP.—Or if they think right they may return a special one.

Mr. ISAACS.—They may, but your lordship must not ask them questions. (To the jury:) You have a right to simply return a

verdict of "Not guilty" without any special observation, but you have a right, also, to return a verdict and make observations. It is a matter for you, which you will deal with according to your own judgment and in the best exercise of your discretion. As far as I am concerned, I should invite you to come to the ordinary conclusion of a criminal trial, and to find a verdict of "Guilty" or "Not guilty," as you may think right. If you adopt the view I am submitting, I should think you would come to the conclusion that the best course will be simply to acquit Sir Edward Russell of the criminal charge of which he stands arraigned. The two main questions, it appears to me, which are involved for your consideration are, first, whether this article passes the limits of that comment which every man is entitled to make upon the public acts of another. The other question will be whether the article is justified—that is, whether the facts complained of with reference to it, the criticism that is, is true in substance and in fact. That does not mean whether there be or not some slight matter upon which the defendant may be wrong as to his facts. It would mean that in substance the criticism must be true. Allow me to point out to you, because it is of great importance in considering a case of this kind, the very broad line of demarcation between these two questions which you have to determine. Don't allow your mind to be confused—if I may use the expression for a moment—by a consideration whether you agree with the criticism which has been passed by Sir Edward Russell's newspaper on these particular acts of the gentlemen who are prosecutors; don't think for one moment that that is involved in the consideration of whether or not this article passes the limits of fair comment. If you think, as you are entitled to think, that the article, however strong and exaggerated—even though "grossly exaggerated," to use Lord Esher's expression—is, nevertheless, an article that a man, however prejudiced in his views, might honestly believe a just criticism to pass upon these acts, then the defendant will be entitled to an acquittal at your hands. If, of course, you thought that the article went further than the prosecutors' thought—that is, if you thought that the article imputed malign or corrupt, sordid and dishonest conduct, it would be totally different. That would pass the limit of the comment or criticism which might be passed by Sir Edward Russell. The prosecutors have told us—or one of them, Sir Charles Petrie has, and the others, it is said, agree with him—that they did not consider that it reflected upon them, upon their personal integrity, in any way, and that it did not impute any such corrupt or dishonest conduct as is suggested by these proceedings. If that statement, which Sir Charles Petrie made in the witness-box, and with which the others who were not called are said to agree, had been made at an early stage of this case, when these proceedings were initiated, when this great cumbrous machinery of our criminal law was set in motion by application for the rule nisi and the hearing as to whether the rule should be made absolute, all this antiquated, obsolete—as many

have thought, at any rate—system of law would never have been requisitioned and put into operation, and you never would have been here to try this case, if only it had been known from the start that Sir Charles Petrie, as a sample of the bulk, thought that this article imputed no corrupt or dishonest conduct to the magistrates who were attacked. And I say that for this reason: This relic of antiquity, dug out of the law books by some of my learned friends with an industry which does them infinite credit——

His LORDSHIP.—I cannot allow you to say that. When a Divisional Court of three judges has laid down the law, I cannot allow you to say that it is obsolete.

Mr. ISAACS.—I said "as some people thought" (laughter). I think your lordship lost that part (renewed laughter). I said as some people thought. As I said it, I described it as antiquated, which I still, with all humility, say it is; I described it as "obsolete, as some people thought," because we have heard from one of the witnesses that he never knew, and never heard, of such a proceeding. I will go further. I am perfectly certain that you gentlemen of the jury, who have some knowledge of criminal law from reading the papers and in other ways, had never heard of this proceeding by way of criminal information, with "rules nisi" and "rules absolute."

His LORDSHIP.—I think you should point out how does it hurt the defendant. Is not he in a better position, with the right of appeal, than he would have been? How does it hurt him that this procedure is used instead of the other?

Mr. ISAACS.—I will tell you. I have every confidence that it will not hurt him, because I believe—I trust, at any rate—that the result of it will be that he will be acquitted at the hands of the jury to whom the case has been sent. But if I am asked how does the procedure affect him, I say this: That the procedure would never have been set in motion if it had been known that that was the view that Sir Charles Petrie was taking. How does it affect Sir Edward Russell? It brings a man who has passed forty-five years of his life in an honourable position in your city into the category of the criminal accused of a crime, and who, if his case was being tried in the ordinary court, under ordinary procedure as a criminal, would be taking his place in the criminal court surrounded by the adjuncts and accessories of a criminal court. It deprives a man of the ordinary position that a citizen would like to take, that he has never been accused of committing a criminal offence. Is it nothing to say to a man at the end of an honourable life that he has had to stand there on his trial before a jury of his fellow-citizens accused of a crime? The ordinary procedure in such cases of libel and defamation is by action. When a man thinks that his character has been defamed he is entitled as a right to bring a civil action to clear his character. No man is entitled to resort to a criminal proceeding for that purpose. These criminal proceedings do not exist for the vindication of private character, and they never ought to be set in

force for the vindication of private character. In an observation which fell during the opening of this case it was said that they were here to clear their character. Proceedings never ought to be started of this kind to clear a man's private character. These proceedings were instituted and really have their root in the desire on the part of the State that there should be some proceeding by which either Ministers, from the Prime Minister downwards, men sitting on committees in the House of Commons, men occupying public positions, judges on the bench, licensing justices in connection with their affairs, and everybody occupying a prominent public post, may be protected from imputations of corrupt or dishonest conduct or anything of that character, because it is necessary to protect the office and—and this is the real reason of the proceedings—to protect the performance of the duties of these public functionaries or public officials. These proceedings were only introduced and only exist for that purpose. It is an elementary principle of our criminal law that these proceedings are not brought to vindicate a private wrong. The only reason why I made the observation I did with reference to it was that I was founding upon the statement of Sir Charles Petrie. Observe the irony of it that you are going to be asked, if I understand the case as it at present stands—because we have had no withdrawal—by your verdict to say that this article meant that these gentlemen, including Sir Charles Petrie and the others for whom he spoke, are charged by this article with corrupt and dishonest conduct when Sir Charles on oath, I think, has told you that he himself never thought that the article meant that. Then this farce—I am entitled to call it a farce, and I do—this farce is to be gone through of asking you to find that the article does not mean what my friend is saying, and I have to ask you to find that the article means what Sir Charles Petrie, the prosecutor, says. If these facts had been known this antiquated procedure would never have been resorted to for the purpose of this case, and there could have been no criminal prosecution. The course resorted to in this case brought about a criminal prosecution because it was said that this article imputed corrupt, dishonest conduct to magistrates in the course of their duties. I agree entirely if it did that it did something which I could not justify, and should not be attempting to justify. That really is the foundation of the whole of these proceedings. If we once start from the prosecutor's standpoint, as we know it now, that the article did not mean that and was never taken to mean it, just see what a ridiculous thing it is that we must be discussing in this court. I don't desire to minimise in the slightest degree the imputation of motive of the character we have had described as regards magistrates, judges, Ministers, or anyone else holding high positions. I agree fully with that sentiment as to what ought to be done. I associate myself fully with the observations made by the learned judge I have quoted, and I go further. Antiquated as this procedure may be, and I don't mean to cast discredit upon it because it is antiquated, it may serve, and no doubt does serve, a useful

purpose when you find imputations of the character described are made upon those holding public posts. But you could not be right to set this procedure in motion for the trumpery and trivial thing which you are now discussing when you once get rid of the imputation of corrupt or dishonest conduct. Ridding yourself of that after the decision of Sir Charles Petrie, and then you are found discussing what? Why, the question which we are really discussing is whether Sir Edward Russell is to be found guilty and sent to the High Court of Justice before three judges of the King's Bench Division to receive such a sentence as they, in their wisdom, shall see fit to give him, because he has ventured to criticise, strongly, perhaps exaggeratingly, the conduct which, as public men, these eight members of the Licensing Committee have committed in connection with the discharge of their public duty. That is the whole point. And as my learned friend said, and he is always so accurate that I like to take my words from him, because then I know that I am precise—as my learned friend said, with the greatest truth, this case is all argument. It is all argument. Whether Sir Edward Russell's view is right, or whether the view of these magistrates is right, we need not trouble ourselves. Simply because the newspaper for which Sir Edward Russell is responsible took a view in argument from which my friends differ, from which it may be that you differ, that is no reason why Sir Edward should be found guilty of the crime with which he is charged. If you find him "Not guilty" you are in no sense saying that the criticism was right. All you are saying is that it is the criticism in which a man holding those views, justly and bona-fide holding those views, honestly believed when he wrote, or rather passed, the article. This case is a question of honest and bona-fide criticism, of fair comment. If you try it by that test, and I know very well that this case will be dealt with by you without consideration of any sort or description of the political parties to which you may respectively belong, if you belong to either of them—I know perfectly well you are dealing with this case upon its merits, and dealing with it in the free, independent spirit I have assumed that you are, and although you may think that in your views the magistrates were right, the majority of the magistrates, as to the course which ought to be taken, that will not influence the decision you are going to give with reference to the conduct of Sir Edward Russell. May I illustrate that by a simple proposition. Suppose that a book was written, and with reference to that book a writer says that it is full of the greatest rubbish, and that the book is merely a mass of most ridiculous misstatements, not worth anyone's serious consideration; suppose that he attacks the book, criticises it most seriously, attacks its views in every way, and suppose that the jury think, as sometimes they do in these matters, that the book is full of the greatest merit, showing the greatest artistic features, and showing that the author of the book has done something worth the highest credit, and yet they think, have cause to believe, that the criticism, though severe, was honest, though absolutely wrong, the

critic is entitled to be acquitted. That really is the law. You must have full and free liberty for discussion and the expression of opinion. Now, do not let us assume that there is any great magic in the Press. Everyone has the same rights as the Press. You, gentlemen of the jury, have the same rights, I have the same rights, to express individual views. On a statement such as Mr. Henderson in the box yesterday said he gave to Mr. Farrie, and on which he based the article, you would be justified in expressing your views. And would you expect to be charged in a criminal case for what you said or wrote? But you would be equally guilty of exceeding fair comment if Sir Edward Russell is guilty. We all of us have the right to express our opinions so long as those opinions do not pass the limit I have already described. When you consider it from that point of view, let any man put the question to himself upon the facts and upon the evidence of my friend Mr. Isaac Morris—if I may call him my friend (laughter)—and upon that evidence would he not have expressed an opinion as strong as Sir Edward Russell did, whatever your political views may be? In fact, if your political views were Conservative, your opinions would be expressed more strongly than Sir Edward Russell's were, because of the danger, injury, and injustice done to your party by these acts. And if you think so—and you have a right to do so—Sir Edward Russell is entitled to be dealt with on that basis. Take away the right of free comment and you take away one of the greatest rights of freedom. This article which you have before you begins: "In the course of the debate on the Licensing Act the Prime Minister said," and then there is the passage I need not quote, a passage known to most people, certainly to all those who take an interest in temperance reform, of either party, it being a statement made by the Prime Minister, as he then was, and who really was responsible for the introduction of the Act of 1904. Now, you must remember, that there have always been two views taken upon that Act. You must remember that in studying the article to understand Sir Edward Russell's views. There is the view of those who think the Act really was not intended for reform and would not work. There is likewise the views of those who thought the Act capable of effecting reform, and who wished to carry it out. The article proceeds: "Now, let us see how this 'greatest contribution ever made to the cause of temperance reform' is operating in Liverpool to diminish the number of licences." Well, there is nothing libellous in that. It merely raises a perfectly just and proper question. Before I proceed will you bear in mind, which I think is of great importance, I have put before you the highest testimony you could get in the city of Liverpool as to the necessity for the greatest reduction of licences that could be possibly carried out in the city under the new Act. I do not suppose it can be suggested that higher testimony than that of the Bishop of Liverpool and Sir William Forwood with reference to this matter could be obtained. They are both quite outside this case. They stand altogether apart from the controversy raging between these licensing

justices. They came forward and they told you something which is of the utmost importance in this case, because it shows you that it was necessary to have the fullest number of reductions of licences you possibly could in order to carry out the reform "sorely needed." As Sir Edward Russell said, "that is the pivot on which the whole policy of reform rests." You will remember that Sir Edward Russell does not stand before you as a fanatical representative of party. You always get two extremes on all questions in this country. You have extremes on both sides. There is the extreme man who does not want to see any of the public-houses shut up, and, on the other hand, there is the extreme teetotaller. As Sir Edward Russell says, there lie between these two extremes the level-headed, sensible-minded men of this country to whom you look for the true view. It is to these men that Sir Edward appealed in his article of December 5, 1904, and it is by these men that most of our questions in this country are decided, by the moderate men who stand at or about the centre. Sir Edward appealed to these men, and said: Let us have a sensible dealing with this matter without any partisan spirit. Let us have real temperance reform. Let us have the Act administered, as the Prime Minister had said, as the "greatest contribution ever made to the cause of temperance reform." If the Act was to be the "greatest contribution ever made to the cause of temperance reform" it meant that it should be administered by levying to the full extent allowed the contribution for compensation in a district in which it was very necessary to reduce the number of licences. We have that district in Liverpool. No evidence has been called to contradict one word of what we have said with regard to that. Mind you, it is part of our justification in this case, part of the thing which we set up as true, and upon which, if there was any doubt about it, my learned friend could have called witnesses to contradict, but not only does he not do it, but one witness—Mr. Oulton—admitted to me that in this city it was eminently desirable that you should reduce licences as many and as quickly as you could, always, of course, without injustice or injury to those whose property you are affecting. Once you have got the Act and the payment of compensation there is no injustice to them because they get paid. Now, the article goes on—"Yesterday there was a meeting of the Licensing Committee to fix the rate of the levy upon licensed houses to form the compensation fund. Four members of the Committee, Messrs. Charles Jones, Henderson, T. D. Laurence, and Doughan, were in favour of fixing the rate at the maximum allowed by the Act." All that is perfectly true on the prosecutors' evidence. "Sir Thomas Hughes, probably feeling that it would be impossible to persuade the Committee to impose the maximum, suggested three-fifths." That is admitted by the prosecutors, which made it unnecessary to call Sir Thomas Hughes upon it. "Even this modest compromise was rejected, and the Committee decided, by the votes of Sir Charles Petrie and Messrs. Isaac Morris, Oulton, Frodsham, Giles, Menlove,

M. P. Jones, and Richardson, to fix the rate of one-half the maximum." So far, again, there is not the slightest question but that that is true. Then it goes on to say—"These gentlemen can hardly pretend that they were influenced in the course they took by a desire to diminish the number of licences in the city. The sum which it will be possible to raise in the current year at the fixed rate will amount to about £17,500." Really, gentlemen, is a case of this kind to turn upon a triviality of that description? Five hundred pounds or a thousand pounds can make no possible difference to this case. Mr. Henderson has told you that the full amount of the levy was £35,000. Nobody knew exactly, but he knew that the half of it would be £17,500, and he supplied those figures. And, indeed, if Sir Edward Russell had sought for evidence that it was so, I do not know that he could have done better, after all, or be blamed, if he took a statement made by a paper of an opposite complexion from his own—the "Liverpool Courier"; because we know that in that article on December 8th, 1904, as was elicited yesterday in evidence, they estimated the maximum amount which could be levied in Liverpool under the schedule of compensation provided for in the Licensing Act, 1904, at £35,000. Half of that, according to the "Courier," would be £17,500, and I think it is a little hard, a little straining in this case, to find so much, or even any, criticism upon a point of that character; and I suggest for your consideration that it is one which you should brush aside, without a moment's further consideration, as one not worthy—not worthy, I say—of affecting your judgment in this matter one way or the other. Now, the article goes on: "Now, apart from expenses of administration, which will be considerable, the very moderate programme which the bench have decided on for the present year must involve an expenditure considerably in excess of the total that can be raised by yesterday's decision." It is a matter of opinion purely as to what will be the result of the expenditure which will be made necessary by the reduction of a very limited number of houses, which the majority of the Bench were allowing—the very limited number of houses, because it was only twenty-nine out of forty-seven originally recommended—which they could allow to be reduced; and out of the balance of the eighteen, although I do not think I can say that the minority were desirous, after hearing the evidence, of reducing the whole eighteen—because apparently the evidence established points upon which the Bench on both sides came to the conclusion that some of these houses ought not to be reduced—still, I am entitled to say that at least four or five more ought to have been included, according to the view of the minority, which included Sir Thomas Hughes, who in reference to one of these very houses said: "If you pass that you will pass anything." Gentlemen, that is a very strong statement, coming as it did from one at any rate of the same political party and addressed to the gentlemen who together were outvoting him and those of the other political party desirous of reducing the number, and the consequence was they

brought it down to twenty-nine. I submit to you that even this is a wholly mistaken opinion, even though it is entirely wrong in its view as to what should be done and as to what expenditure would be necessary. Even although you might come to that conclusion, it still remains as an honest expression of opinion—an expression of opinion which Sir Edward Russell was entitled to make. The article goes on to say:—"The Bench have not ventured to propose the extinction of a single full licence, but they have picked out a few of the '69 beerhouses in A and B divisions for abolition under the Act."

His LORDSHIP.—I have looked up my notes, and my evidence is not clear about the number of '69 beerhouses in A and B divisions. Can you tell me what was the evidence given upon it? Will Mr. Sanders tell us?

Mr. E. C. Sanders (clerk to the magistrates) was called into the box.

His LORDSHIP.—Will you tell us, Mr. Sanders, how many '69 beerhouses were there in A and B divisions?—About ninety; just under one hundred.

Mr. ISAACS.—May I ask another question which I don't think is in evidence?

His LORDSHIP.—Yes.

Mr. ISAACS (to Mr. Sanders).—There were two fully-licensed houses included in the twenty-nine which were the subject of reduction. Were these houses of about £300 to £400 compensation? —Yes, the compensation awarded in one case was £440 and in the other £350. I should like to say this that the figure I gave did not include restaurants.

Mr. ISAACS (proceeding with his address to the jury):—I am dealing with the point that the Bench have not ventured to propose the extinction of the new licences, but picked out a few beerhouses on which the compensation would be £800 or £900. It is true except for this trivial point, as I describe it, when it says they don't propose the extinction of a single full licence. It turns out, in fact, although Sir Edward Russell did not know it, that two out of the twenty-nine were full licences, but they were very, very small. They were, as we have just heard from Mr. Sanders, £350 in one case and £440 in another, one of which was under appeal. They are both under the average, even of the beerhouse, which is said to be £500. These are slight inaccuracies, which really mean nothing, and upon which you ought not, if I may say so, waste a moment's consideration. They don't touch the broad aspect of the matter we are dealing with; they don't touch the real point. What is the point of the observation by Sir Edward Russell? The point of it is this. That when you are dealing with full licences you have, as a rule, to pay larger compensation than when you are dealing with what is described as a '69 beerhouse, which means the beerhouse which got

its licence under the statute of 1869. It means that if you are dealing with a fully-licensed house, as a rule, it is a much more valuable house than the beerhouse, which has a much more limited value, and, therefore, it costs less to compensate a '69 beerhouse than a fully-licensed house. The article goes on:—"The amount in these cases is not likely to be less than £13,000." We know that the claim was £17,530. I suppose it may be a matter of opinion as to what the amount of the claim is going to be. I submit to you there would be perfectly reasonable and sensible people who will say, "When we levy this money we must levy sufficient to cover all our liabilities." It is not like a tax which you are going to impose upon a man. What you are doing is levying money at a very moderate rate, a very small amount, which can be levied under the Act of Parliament, so as to inure for the benefit of the very persons who levy it. Those who pay it will get the benefit of it either in the one sense or the other. If a licensed house is extinguished out of that compensation fund they get a payment which is meant to pay them for the value of it. On the other hand, if it is not extinguished, and if they retain their house, they get an advantage through there being one competitor less in the area in which they are trading. Then the article goes on:—"The matter, therefore, stands thus: For the extinction of the selected licences, licences which the Bench have decided ought to be extinguished forthwith in the interests of the community, a sum of no less than £21,000 is required, and now the Licensing Committee decline to levy a larger sum than £17,500." No doubt their declining to levy a larger sum than £18,000 and some hundreds, a sum not much less than £21,000, is quite right if you take into account the £13,000 which is stated to be the amount which we thought then was about the amount required. Then we come to what might be called the most important part of the article. So far it would be absurd to suggest any libel. "There is only one explanation of this state of affairs"—that is, the state of affairs in which you have got half the levy instead of the whole, a state of affairs in which your policy of reform and reduction of licences is crippled by the half levy. "The dominant party on the Bench do not desire to facilitate the working of 'the greatest contribution ever made to the cause of temperance reform;' they do not desire to diminish the number of licences in the city, but rather to hamper and obstruct those who are striving to effect without 'gross injustice and discontent' a sorely-needed reduction." Is not that every word of it true upon the evidence given by Mr. Morris and by those who were called on his behalf? Even if not true, is it comment which a man holding the position of Sir Edward Russell was entitled to make? You know why the words "gross injustice and discontent" are used. It is quoting Mr. Balfour's words, meaning that compensation should be paid, whilst before the Act it could not. Is it not now perfectly true on the evidence of these gentlemen? Here we have got one side who desire to reduce as much as possible. You have the other side saying, "No, we won't; or we will reduce

the twenty-nine houses on which we have got a report." Is it unnatural that that view should be taken; that they did not desire to give the full benefit of the Act in the cause of temperance reform, but rather desired to see it hampered by voting only half the levy? The article proceeds:—"The effect of the Committee's decision will be to make the rate of reduction actually less than it was under the old order of things, a result which no doubt was shrewdly foreseen. We congratulate 'the trade' upon the ability and courage of their friends—we had almost said their representatives—on the Licensing Committee." The effect of that was perfectly truly to make the rate of reduction less. In 1904 you had sixty-six licences disappearing, forty-eight of which were extinguished by refusal, and the other lapsed. So the reduction in 1904 under the old system was, as Sir Edward Russell said, greater than under the new system, when you are going to reduce twenty-nine beerhouses. He says that the new Act of Parliament is not only crippling the powers of the magistrates—but, as said by the Prime Minister (Mr. Balfour), to give more power—but Sir Edward Russell says, "Here we have got them administering the Act that they not only do not extend the powers of the justices, but cripple them to the extent in which your 'sorely-needed reduction' is diminished or curtailed to a great extent." These facts have been proved. Then it is said, "We congratulate 'the trade' upon the ability and courage of their friends—we had almost said their representatives—on the Licensing Committee." Is it not perfectly plain that what the article is doing is attacking the administration of the Act by levying a smaller sum instead of the maximum, and, it is said, to that extent, it is in the interests of the trade, and, of course, you are the friends of the trade, and who will gainsay it? I would like to know who will say of these gentlemen outside, for example—if I may for once, and once only, introduce the party platform—that these gentlemen and their party were not the friends of the trade? Of course they will say it—perfectly honestly and legitimately say it, and hold the view. I am not asking you to come to any conclusion, but I do say that does not entitle them in any state of facts to come here and ask you to find a verdict when we are in alliance, political alliance and political support given by the trade to the party, and which, as Mr. Frodsham said—I don't quarrel with it, I quite understand—so that, after all, he thought they were very sensible and they knew why they do it. It is natural enough. After that can you say, do you think you ought to say, that Sir Edward Russell is to be found guilty of the indictment upon which he stands charged. That is the whole article. When you come to deal with it in the light of the facts which have been disclosed in this court, when you scrutinise that article, with the assistance which you have had from the evidence which has been given in this court, don't you think, gentlemen, that the prosecutors are at the present moment feeling very considerable regret that they ever thought fit to bring these proceedings? Don't you think that in their heart of hearts and in their better moments,

when political passion or partisanship are not in the ascendant—men of honour all of them, men of position—that they will themselves probably think at this moment, that they hope that your verdict will be one of acquittal of the defendant, so that they might not have upon their mind the burden of responsibility of thinking that they have brought down a high-minded and honourable man from the position he has occupied to the credit and glory of the city to which he belongs? Don't you think that Sir Charles Petrie, for example—one of the best, probably, of the gentlemen representing the eight—that in Sir Charles Petrie's heart there is that view. He is too loyal a man, too much of a gentleman, to disassociate himself from the action of his brother magistrates. He has said that he did not instigate these proceedings, aye, indeed, that he never would have thought of instigating these proceedings, but he thought he must take his stand with the others; but in his heart—I won't say in his better mind, because, judging from Sir Charles Petrie as I judged him from his demeanour in the box, and as I ask you to judge him—no one in this court more regrets that these proceedings have been taken, and that this trial has taken place, than Sir Charles Petrie. Not far removed from him, I would venture to observe, would be the regret of the other gentlemen, including Mr. Isaac Morris, who must feel that whatever the result of this case, at any rate it would have been better if the atmosphere in which we have had to conduct the case had not been introduced for discussion in the court of justice. Don't you think, gentlemen, that it would have better served the interests of the city if this case had never been fought? Don't you think that the position of these gentlemen, in view more especially of the disclaimer which was made by Sir Edward Russell of any imputation of dishonest motives, which they all accepted and must accept—don't you think that it would have been better if these gentlemen thought they had a grievance, if they had brought an action for damages in an ordinary civil tribunal; but don't you think that, far better than that, that these gentlemen would have best consulted their own position and done best and justest to their own credit, and would have best recognised their own high honour, if they had determined from the moment the article appeared to leave their conduct to the judgment of their fellow-citizens, who would know how to estimate the article which came from one view and would know also how to estimate the condemnation, if any, which was attributed to the magistrates? Gentlemen, in conclusion, don't you think that Sir Edward Russell has amply, aye, more than amply, most fully and completely vindicated the attitude, the position he has taken from the start? Whatever else may be said of Sir Edward Russell, no can suggest that he is anything but a high-minded, honourable man, actuated by the purest motives. Don't you think that holding that position, and from that point of view, that it might have been assumed that he was dealing honestly and bona-fide with this question? Gentlemen, in conclusion, am I

asking too much of you, am I putting my case too high—I trust not, I intend not—when I say that this case can be entrusted to your care for your decision and for your judgment, without regard to or consideration for political parties, whatever your view of politics may be, that you will regard this case as men to whom great and important interests are confided; and that you will see your way to doing your duty and acting boldly and independently, notwithstanding that it may be my lot, or rather Sir Edward Russell's lot, to have a view indicated which may be against him? I do not know—but notwithstanding that that may be, even supposing that my lord took a far stronger view against Sir Edward Russell than I am sure he will take, and even supposing my lord took a view which indicated to you that he thought if it was left to him, or anything of that kind, that on the whole there ought to be a conviction—you will give, of course, rightly and properly, far be it from me to suggest otherwise, due weight and consideration to every word that falls from my lord on the Bench, but if it conflicts with your views, after you have given due weight and consideration to what my lord has said to you, gentlemen of the jury, vindicate your position, stand firm, give your verdict in favour of an acquittal if you think it, whatever the views may be that may be put to you in the summing up.

The court then adjourned for luncheon.

MR. W. F. TAYLOR'S SPEECH.

Upon the resumption,

Mr. TAYLOR addressed the jury. He said:—In this case Sir Edward Russell has had the supreme advantage of being defended by Mr. Rufus Isaacs, and I cannot help expressing my admiration of the two magnificent speeches he has made on behalf of Sir Edward Russell—brilliant in their language, telling in their appeal to you, dramatic in their force, touching in their reference to the man whom he was defending. He has not dwelt at great length upon that which, I submit, is the main, nay, the only, topic in this case—the document with reference to which Sir Edward Russell is charged before you; but he has dwelt, as I say, with consummate force and power upon topics of constitutional importance, no doubt. He has referred to treating this matter in a broad spirit. I agree with him to the full. The eight gentlemen I represent desire that this case should be dealt with in no other way; the substance of the matter and the way in which a Liverpool jury is accustomed to look at it, not petty details, not trifling inaccuracies, not a question of mere mistakes here and there, but broad as you like, fairly, impartially deal with it in that way. That is the way those I represent desire you should deal with it. I endorse to the full the appeal which has been made to you by Mr. Isaacs on behalf of Sir Edward Russell. All that the

prosecutors can ask, or ought to ask, is that which, I have no doubt, Sir Edward Russell himself through his counsel is asking, that you should consider the evidence, and that alone, and, having considered it, weigh it, come to a decision, and give a final verdict according as you in your conscience, acting in your duty, think right and proper to do. Something has been said about pressing this case against Sir Edward Russell. No such feeling exists in the breasts of those who appear here before you. Mr. Isaacs has made a reference to the term the elasticity of the jury box. Every point that can be made in the construction of that article, every point and topic that can be weighed in favour of Sir Edward Russell, his lengthened service, his age, his contributions to all that is good and pure—weigh them as elastically as you please—there will be no appeal made by me on behalf of those eight gentlemen that you should not do that, and do it in his favour. But, after all, taking all the topics mentioned, it comes back to your view of the real meaning of this article. One observation almost disposes of three-quarters of my learned friend's observations to you. If, after hearing the whole thing fairly, you come to the conclusion that this article is not defamatory this observation of Mr. Isaacs's is fully borne out. If it is not defamatory, this proceeding is trifling; you may call this procedure antique or obselete, whatever you like. But if, after a fair weighing of this matter, you come to the conclusion, or the conclusion, after considering the terms of that article, is forced upon your judgment that that article is in terms defamatory of these eight gentlemen, I am not to be told, nor do I believe, that a Lancashire jury are going to be swayed from the path of right by favour or fear in respect of one side or the other. I join in the appeal to give every weight to the topics addressed to you, and to give every weight to the position of Sir Edward Russell; but at the same time if these eight magistrates have been the subject of a defamatory charge, have been charged with a breach of their duty as magistrates, with corruptly administering that office, whether Sir Edward Russell wrote the article or allowed it to be published with his authority he has taken before you the responsibility of that upon himself, I should be the last to imagine that you (the jury), dealing with the case on the evidence and on the merits, are going to consider the effect upon Sir Edward Russell of what your verdict will be. Am I going too far to suggest that if he had received the information which we know now was given by Mr. Henderson and had had the opportunity of hearing what Mr. Henderson said, and knew the real facts of the case, he never would have written or allowed to be published the article which is the subject matter of your inquiry to-day. My learned friend has asked why this case is brought before you. That I will deal with, and I hope to deal with it with absolute fairness. This charge against the eight magistrates is made in a paper which is read with interest, listened to with attention, by all classes of the community. High and low, rich and poor, read the "Daily Post and Mercury,"

pay attention to its statements, pay attention to its comments; and every argument and every observation that my friend made about Sir Edward Russell, in which he spoke of his position, his work, his experience, and all that Sir Edward has done for Liverpool and has done for the causes dear to him, are additional reasons why this charge is a charge that the eight magistrates felt was one they could not rest under, dare not rest under—they could not rest under the stigma which had been cast upon them in this article of July 13th. Now, it has been said that this procedure is a rusty piece of machinery from the old storehouse of the law. Those are expressive adjectives. It is pleasing to think that the cases are rare in which magistrates, or judges, or ministers are attacked in their official capacity; but where they are so attacked this is the appropriate and proper remedy which the law gives to them. As that topic has been introduced—and has been introduced, I suppose, for the purpose of in some way discrediting the eight magistrates—let me explain that this machinery is not allowed to be introduced or used without the sanction of the judges of the land, who have had this matter before them and have allowed it to be done. And if the procedure is rare, and has not come within your experience before, then it is because the procedure is reserved for cases which are grave, and because of the tremendous responsibility involved. I do not think Sir Edward Russell would for a moment, if I may judge by some of the passages in the article of December 5th, express dissent from recourse to this procedure in a case where he had to admit that magistrates had been attacked and defamed in their magisterial capacity. What does he say in that article? He was bringing before the citizens of Liverpool the advantages of dealing equitably with licensing questions, because he considered it would be calamitous if there should be a feeling of want of confidence in the actions of those to whom the people looked for impartiality. That is why this proceedure is brought. I submit with absolute confidence that the case is made out, and that no comments can be made of real value on the fact that this kind of procedure is resorted to. It goes back to this, and this alone: What is your view upon this document, this article? If it is not defamation, there is an end of it, and I need not trouble you about procedure or proceedings. As to the defamation, the prosecutors think they were entitled to bring before a jury of their fellow-citizens these statements which challenged their conduct upon the Licensing Bench in respect of the Licensing Act. Reference has been made to the principles of the freedom of the Press and the limits of comment. I have had the advantage since yesterday of going through the speech of my learned friend in opening this case—a speech of great power. But most of it was taken up with the position of Sir Edward Russell and by reference to the principles of liberty, and the freedom of the Press, and the liberty of the subject. Do we dissent from my learned friend on any of these topics? The eight magistrates whom I represent do

not for a moment suppose or contend that the liberty of the Press should be fettered. They do not say that the conduct of magistrates, of justices, and judges should not be criticised. From the Lord Chancellor downwards there is no suggestion made on their behalf that there should be a limit to the fair and free discussion of their conduct. When is there any likelihood of the liberty of the Press or the rights of the subject being interfered with in this case by any decision of yours? Liberty of the Press! I go as far as my learned friend, who read passages from judges and great lawyers. I make no dissent. Let us have criticism as free as you like, comment if you like, almost unlimited, extravagant, or, to use his own words, grossly extravagant or exaggerated, but let the comments, judgments, and opinions be based upon the right facts—unless the language is so extravagant that the jury say it ought never to have been used. That is the case you have to consider, if there is anything in the case from one end to the other—were the criticisms made in the "Daily Post and Mercury" of July 13th, not were they extravagant, not were they grossly extravagant, not were they, as far as these eight magistrates are concerned, sincere, but were they founded upon fact? Now, they are untrue. You may go and get information for the paper on certain things you believe are facts, but if these statements are not verified and are not really facts, and you make strong comment on them in a responsible paper conducted by responsible people, and after the comments have been made upon them they turn out not to be facts, it cannot be described as fair comment which is based upon that which never existed. Before I sit down I will demonstrate to you the truth of the charge made against Sir Edward Russell, who accepts the responsibility for the article. Beyond receiving a parcel of proofs at or about midnight, as to the accuracy of which, in the case of this article, he knew nothing, except that he relied upon someone upon his staff, he allowed this article to pass to be printed, and so he accepts the responsibility. What you, gentlemen of the jury, have got to say is that it was not whether he is morally to blame, but whether he has allowed to be published that for which he takes responsibility, which is a defamatory libel upon these eight magistrates. I care not, gentlemen, that something has been said about politics; I care not what politics any of your number may be. We know something about Liverpool and Lancashire juries in this court, and in this case I am content if the whole twelve jurymen were on the opposite side of politics to those eight magistrates. They ask for this alone, for your unbiassed judgment on the meaning of this article. If you can, upon your conscience, when you come to examine it, say there is no mis-statement—I do not smell at niggling or fine statements, but substantial statements, which charge these eight gentlemen, as they were charged by Sir Edward Russell in this article, with injustice. Bring to the discharge of your duty here, without fear or affection, a fair, mature, and calm judgment

in respect of this document, and say, one way or the other, does it defame these eight men? I say it does, and the language of the article justifies their conduct in bringing this matter before you. The article goes beyond that and charges these eight men with corrupt conduct as magistrates. I will tell you what I mean by "corrupt." Reference has been made to Sir Charles Petrie's expression. What Sir Charles Petrie said was that he did not regard the article as a charge of personal corruption. What I submit is corrupt and improper conduct in a judicial position: Supposing in this case there were a juryman of pronounced political convictions, who was to decide this case biassed by his political convictions and not on his conscience—with great confidence I submit that is corrupt conduct as to judging a case. You are not likely to be influenced by that. You are accustomed to treat facts and deal out the principle of justice as between man and man without fear or favour to one side or the other. I want to call your attention to the fact that this article relates and relates only to the conduct of these eight magistrates on the 12th July. It is limited to that. You have heard a great deal about the selection of the Licensing Committee. It is said by my friend that this is a political case. I submit that when you have read that article you will say that it is not a political case, however politics might enter into it. It is a question of the terms of that article. If it had been framed in the mode in which my friend Mr. Isaacs addressed you on the introduction of politics on to the bench at all, do you suppose these gentlemen would ever have brought the matter before you? If it had been as Sir Edward Russell said it would have been if he had known the true figures and facts of the case—criticism that it was unwise to do what they did, or if it had been a statement that these gentlemen, to use a phrase of Sir Edward Russell's in the box, had conscientiously acted on political convictions, in order to do their duty and to do it right—do you suppose there would have been any objection ever made, or proceedings ever brought, by these eight magistrates against Sir Russell? That is not the case. The case here is that this article charges eight magistrates knowing that certain things are required deliberately going into that Committee, acting in the interests of what are called their friends, and voting for that which they knew to be wrong. What is that? What do you call that? Is that right conduct or honest conduct? Sir Edward Russell says it is wrong conduct. I submit to you it is corrupt conduct, and it is conduct which, if it is charged against a magistrate high or low in position on the judicial scale, he could but resort to a court of justice to have the matter brought before you. Something has been said about want of communication to Sir Edward Russell. I do not think it was resorted to, or observed about again, by Mr. Isaacs in his closing speech to you. But Sir Edward Russell told us to-day that there is no word in this article—there may be some minute correction—to which he doesn't adhere, and if he had to write it

again the alterations would be few indeed which he would make. If he says that to you to-day, that was his opinion in July, and he had, when he got notice of these proceedings, when he found the rule was served upon him, every opportunity, if he had chosen to—but he did not choose to—to make any explanation or offer any apology for that which he had allowed to pass. And he stands before you to-day and he justifies what is said in this article. I submit I was right when I said in my opening, and when I say now—the only substantial question here is: What does this mean? Not by spelling it out against Sir Edward Russell, but in substance, in fairness as between the two. What do you say this article means? Gentlemen, other topics have been introduced as to the mode in which in January this Licensing Committee was selected. You have heard observations deprecating the introduction of political sides in this matter. But who suggested this at the start? Who suggested that this Licensing Committee should be composed of the two sides in politics? Gentlemen, you know that when a certain Government is in power magistrates are appointed of a certain political complexion, and when another Government comes in another set of magistrates of another political complexion are appointed. I pass no criticism on Sir Edward Russell when, on the 5th December, in an article in the "Daily Post," he suggested that there should be a certain number of magistrates selected from both sides, to be presided over by Sir Thomas Hughes. You know, gentlemen, that that is the beginning of it. And what is now objected to is not that there was a political complexion of the two sides on that Committee, but that there was a larger number of the representatives of the Conservative party. You are asked to dismiss cant from this case. I have no doubt you will. But if the other side had been in the majority, do you suppose that on this Licensing Committee there would not have been a majority on what they thought to be the right side, who would have said they ought to have what they called a controlling interest on the Licensing Committee? Of course they would. Dismiss cant from all your minds by all means, but at the same time recollect that this topic has very little indeed, if anything, to do with the matter which is before you for discussion. You are not asked to consider the conduct or, at any rate, this libel—as I submit it is—was not directed to considering the conduct of those who were selecting these houses for extinction. It is directed to the conduct of those who were raising the levy on the 12th July. And, gentlemen, I ask you this question—If these eight gentlemen had voted otherwise than they did, for a levy which was to raise half the amount of the rate, would not they have been deliberately neglecting the duty and the trust which was imposed upon them if they neglected to confine their vote to half and if they had voted for the maximum? You cannot, gentlemen, in following this matter help seeing that from the 19th January to the 31st January and during February and March this committee had its instructions from the

body of justices that this levy shall be kept as low as possible. Not only that, but that it was to be kept at a limit which was to be sufficient to raise a compensation fund for the extinction of the selected houses. Do you mean to say that if Sir Edward Russell had been informed—as, on inquiry, if he had chosen to delay this comment, he might have been informed—of the fact that this Committee were exercising powers which had been entrusted to them by the whole body of the justices, and of the fact that these estimates, which they themselves had made, had been forwarded in reports to the justices of a number on which the levy should be laid, and the amount that should be laid, would he have passed this criticism upon them? He cannot have studied the facts on which the criticism is founded, and I submit to you that any fair-minded man, if he knew these facts, would say that if they voted for the maximum levy they were disregarding the instructions which had been given by the whole body of justices. And I say that it is difficult to reconcile it with obedience, or any rate the right following out of the instructions that were passed by this Committee that were accepted by the body of justices—to reconcile that with the statement made by Mr. Henderson in the box, and by the last witness, Mr. Jones—I think it was—who said he would and did vote for the maximum amount. What does Mr. Henderson, the chief spokesman, say himself? He says he agreed in the document of the 31st January, containing an instruction as to the levy, and made no dissent from it. He made no dissent not because it was hopeless to dissent, but because, while he objected to the power to levy at all being entrusted to the Committee, he never did object to that direction which was given and submitted to by the whole bench of magistrates, that all that should be raised should be the necessary sum and the expenses. If they had not followed that out the Committee would not have been following the instructions which had been given to them. And because they did not follow it out, is it right to say that the men who carried out these instructions on the 12th of July, that they were "hampering and obstructing those who are trying to effect 'without gross injustice and discontent' a sorely-needed reduction"? It is said that this libel is justified because of the conduct of the eight magistrates in relation to the schedule for the selection of the twenty-nine houses in February and March of this year. It is a very curious thing—indeed it is a very significant thing, that when Mr. Henderson objects seriously to anything that these eight magistrates did, it is conveyed into the public Press so that it might be commented upon. He was party to the first report of the 31st January; he was a party to the report of the 22nd March, and if there had been seriously a serious objection, a real objection to the conduct of these eight members of the Licensing Committee in February and March, do you believe that that matter would not have been brought before Sir Edward Russell. If it be true that there was a serious objection, and that they involuntarily acquiesced in the decision of those eight

magistrates and thought they were importing political bias into the discharge of their duty, don't you suppose the powers of the Press in Liverpool would have been invoked to comment in February and March. Nothing of the kind. Sir Edward Russell tells us that he heard nothing of this which is alleged, and the first thing he did see was in this article, which was handed to him by the office boy from the "Daily Post" office on the 12th July. The article refers to the levy made on the 12th July. How did it get into the columns of the "Daily Post"? I do not know whether you noticed this significant fact, that Mr. Henderson, in his evidence in chief, did not bring before you the mode in which that was communicated to the Press, and it was only when he was in cross-examination that it turned out that this article is founded on the information of an opponent on the Bench, a political opponent; an opponent who goes red-hot from defeat at the Committee, at which he was angered, who, according to his own account, in the blaze of indignation communicates with that frenzy to Mr. Farrie and Mr. Jeans at the Reform Club. I ask you your honest opinion: Do you think that that is the foundation on which charges of this kind should be based? Do you think that serious charges, defamatory charges, charges against men who, in public opinion—for though I have said nothing about it, these eight magistrates have their character, have their services, have their views of public honour, and of the good of the town; are you going to believe that the desire to do well for your city is confined to these six gentlemen on the other side? Don't you think that these men have their idea—they may be ignorant, they may be misguided, in the views of other people—don't you think that they have their notions of doing that which is right, good, and said to be moral, and that which is said to be sweet, in favour of their fellow-citizens? They may not think it right to refuse these licences without compensation; they may think it right to proceed at a slower rate than the more ardent and progressive spirits. They are entitled to their views. And don't you think that when a great paper, conducted by an eminent man, publishes comments which are defamatory, on these citizens, men who pass among their fellow-citizens day by day, who, if this is true, cannot go out in the street or serve on the bench which, if they let go unchallenged, would be brought before them as a stigma on their conduct as men and as citizens and as magistrates? Do you think such charges should be made about such men on the tattle of a smoke-room, tattle formulated without any written document—no reference to figures, no written anything put down as far as we know according to Mr. Henderson's account, which he never disclosed until he was forced to, because they knew if it came out it would show the miserable basis on which this miserable charge was founded—the miserable tattle of the smoke-room by people who meet there to talk about politics generally, red-hot from the Committee on which this adverse vote was given; annoyed because he could not have his own way about this levy; founded on the gossip of Mr. Henderson, who, in the box, said he

did not think, who could not remember, who did not remember, and who appears to have had in his pocket at the time the very quotation with which this article begins? That is what Sir Edward Russell founded his article upon. If you had had such relation made to you, and you were asked to cause that to be published in some paper, bringing charges against persons of respectability, is it too much to say that you would have asked for reflection; is it too much to say that when these figures and facts were brought before you, even though they were brought by a man in whom you had confidence, you would say I will wait, I will wait twenty-four hours or forty-eight hours or some days, and inquire what were the instructions to these gentlemen, what was their duty, what were the purposes of this levy, what was it required for, how much should it have been? No suggestion of inquiry, test, or correction, or research? Mr. Henderson tattles in the smoke-room, Mr. Farrie and Mr. Jeans listen; no notes are taken; somebody writes it out in the "Daily Post" office; it is taken to Sir Edward Russell's house; he reads it over; no inquiry is made; he sends it back, and it appears in this paper. What do you say to that? As fair judges, between the magistrates on the one side and Sir Edward Russell on the other do you say that was a right thing to do? Look at its results. You talk about the liberty of the Press. The Press is a tremendous power; nobody wishes to interfere with its liberty; but if you are responsible for the conduct of a great paper you must be careful before you allow things untested to go into your columns, and if you allow them to go in you must take the consequences if facts which you might have ascertained to be incorrect are put wrongly and bring confusion and contempt and reproach upon those who occupy positions of honour and respect in the midst of the city. There is no need to go into minute criticism. I don't ask you to spell out anything against Sir Edward Russell. I take his own words: "The matter stands thus"—that is the substance—"for the extinction of the selected licences"—licences selected, mind you, in March, long before this meeting which is being criticised was made the subject of comment—(reading:) "for the extinction of the selected licences, licences which the Bench have decided ought to be extinguished forthwith"—that means the licences which they decided upon for 1905—(reading:) "in the interests of the community, a sum of not less than £21,000 is required." Is that a matter of opinion? Is that a matter of judgment? That is a statement. The man who comes to this article, reads it, knows it is to go out to the world with the full authority of the paper and of its editor, a grave statement in support of a grave charge, knows that for these licences £21,000 is required, not less, and now the Licensing Committee declined to levy a larger sum than £17,500, which is £3,500 or thereabouts too little. I don't ask you to spell out anything else. What does that mean on the part of these gentlemen? What can it mean? One thing only—that these eight magistrates, with all their knowledge about what has taken place, with their instructions which everybody

would think had been given by the whole body of justices, knew that they went to that Committee to raise a levy of not less than £21,000. What do you find they did, according to this statement? Declined to levy more than £17,500? I don't care who considers this question, what complexion of politics you may be, I ask you honestly to say what does that mean? What is conveyed by those words? That they neglected their duty—they acted in breach of their duty; and if they did that, or if any man does it, knowing that his duty on a committtee is to vote for a sum which he has pledged himself to vote for by his oath, and goes there and deliberately, in order to gratify his friends or people whom he represents, and in breach of his duty, does not do it, he does that which is not done in good faith. It is a charge of bad faith, of corrupt conduct, in his office as a magistrate. You heard Mr. Henderson give his account of the information he gave to Mr. Farrie. There were two significant or remarkable exceptions from the statement he made. They are sentences or words which have found their way into this libel. The first is this: "The very modest programme which the Bench have decided on for the present year must involve an expenditure considerably in excess of the total that can be raised by yesterday's decision." You heard Mr. Isaacs go through this document. He did not trouble himself much about that "must involve." If it "must involve" it, then these people ought to have voted it; it was their duty to do it. If it is put as a matter of probability, that is a very different case. If it had been said in this article that they ought to have done it, nobody would have complained; or that it "might," or "may," or "probably might," and, therefore, as a matter of wisdom and safeguard you should do it, no one would have complained. Mr. Henderson says he did not say that; he is not responsible for it. Where did it come from? There is another bit which he is not responsible for: "The amount in these cases is not likely to be less than £13,000." He says that he did not give that, and he might well say he did not give it. £13,700 was the total amount of the claims in these ten houses, and Sir Thomas Hughes—whom we have not seen in the box, because the matters about which he could speak were admitted—according to Mr. Henderson, is said to have said that these claims were too much. Do you think that any man of sense exercising a reasonable judgment would have said that these ten houses would be likely to cost £13,000, when the very claims had been referred to Somerset House because they would not agree with them because they were far too much? These two statments have got into this document nobody knows how. It shows the advisability of testing and investigating. Mr. Henderson is not responsible for them, but they are two of the factors which go to make up the charge against these people. It is because they required £21,000, and because the £21,000 was made up of £8,000 and £13,000, that this seems to Sir Edward Russell so gross a breach—so grave a scandal, I think, he said—and that these comments were called forth in this article. I put it to Sir Edward Russell in the box when I cross-examined him.

I asked him to assume that he had been given the correct information, and then what does he say? Would he have used this language? No. Why not? Because it would not have been right or fair to use it. Because this language is spoken of men who, knowing their duty, neglected it—bad faith! What would he have said if he had known the true facts? He would have said that it would have been better or wiser to vote three-fifths or the maximum. If he had said that, would anybody have thought worse of those eight gentlemen? They would have said they had their views. They may be right or wrong, they may be coloured with politics if you like, but they have acted on honourable views. That is not the statement made here. It is because these comments that are afterwards made are based upon a foundation of alleged facts, which are not the true facts, that these magistrates say this is defamatory. I ask each of you twelve gentlemen viewing that fairly, not trying to come to an adverse decision, and not trying to come to a decision in favour of the magistrates, taking that statement in the article, does not it put forward as the basis of common facts which never existed? "Up to that date," says Mr. Oulton, "everybody thought that the rule was to be the necessary amount plus the expenses for extinguishing all these houses," and he was surprised when at the Committee there was a proposition for raising the full amount. No fault can be found with magistrates who take the view that the maximum should be raised if they take it honestly and think that is right they are entitled to vote upon it. On the other hand, no fault can be found with men who honestly think that one-half should be raised. But if as delegates you have had, as appears to be admitted in this case, your instructions and your views from the body who has appointed you that the right sum is to be a sum sufficient to make the necessary compensation fund to extinguish these licences and the expenses, your duty is to form an estimate as near as you can of what that will be. If you do that there is no more to be said. But if people have done that and are then to be charged in this language it could only be on a superstructure of alleged fact which never existed. How does the matter stand? It stands as Sir Edward Russell said it stood, on these facts, which are not the true facts. Do you think the comments that follow are right after the real facts had been found out? It may be that some of those comments would be right if the facts as alleged were the true facts. I cannot imagine comments strong enough if a member of the judicial bench, or of the jury, knowing his duty and how he ought in conscience to vote, with the desire to gratify friends, deliberately neglects that duty—not to put money into his own pocket, that is not suggested, I care not whether that conduct is founded upon political bias or anything else, I do not use Sir Edward Russell's word dastardly, but I say it is corrupt; I say it is wrong; I say it is bad. But I can imagine comments being made in a public paper, conscientiously made, on such conduct if it existed, and if that conduct had existed nothing could have been in a sense too strong. But if it do not exist, and if these comments are

founded on the basis of facts which do not exist, what are you going to say? Are these eight gentlemen justified in coming before you? They could do no less. They are appointed to act in the way they did, and owe a duty to their country and to this city, and if they are charged, especially in such a way as this and in such terms, they are bound in self-protection to protect themselves in their office, and to have the matter adjudicated upon by a jury. Not fettered by narrow limits, not giving a decision upon narrow views or narrow points, taking the broadest view, the most elastic view, that you like to take about it, this article is defamatory. These are the facts on which these comments are based. "There is only one explanation of this state of affairs." What "state of affairs"? That these men went there knowing £21,000 was required, and only voted £17,500. "The dominant party on the bench do not desire to facilitate the working of 'the greatest contribution ever made to the cause of temperance reform.'" Sir Edward justifies that. Has that been made out if this fact or facts on which it is based are wrong? "They do not desire to diminish the number of licences in the city, but rather to hamper and obstruct those who are striving to effect, without gross injustice and discontent, a sorely-needed reduction." Do you find that is made out in this case? If the facts had been true it would have gone a long way to justify that comment, but if the facts are not correct where on earth is the justification for such comments as these? "The effect of the Committee's decision will be to make the rate of reduction actually less than it was under the old order of things, a result shrewdly foreseen." What does that mean? That is a charge I should think of bad faith. If the facts are correct upon which the comment is founded it would be a proper comment. If their duty being to vote £21,000 they had only voted £17,500, they knew, none better, that that would cripple the working of the Act and would prevent the extinction of the licences provisionally renewed, "a result shrewdly foreseen." And that is stated of these eight magistrates who on the facts now are shown, in respect of this levy, to have done that which is absolutely right according to the best of their judgment. This is a charge against the eight magistrates that ought never to have been made, that never would have been made if the real facts had been brought before those responsible for this article. That they were not brought before them is due to no fault of the eight magistrates in this case. It is due to a want of some arangement or to undue trust in the source of the information relied upon before these comments were made. It is not true to say that the rate of reduction of licensed houses has been interfered with. We have had the evidence of the magistrates' year book, in which a contrast of the periods is given. We have the period of fifteen years before 1904 and one year afterwards, and the total number of licences taken away in those fifteen years was 484, and in this year forty-eight. So that if the same rate of disappearance had been maintained in these former years, instead of 484 you can see for yourselves that about 700 licences would have been taken

away. The rate has been maintained and is maintained, the statements made in the paper on that point being inaccurate. But it does not rest there. Having taken the information of Mr. Henderson, the article goes further:—"We congratulate the trade upon the ability and courage of their friends—we had almost said their representatives—upon the Licensing Committee." Could these eight gentlemen have sat down under that? And these eight magistrates were charged with lessening the levy in order to cripple the work—a result which they "shrewdly foresaw." They were charged with having done that, in their magisterial office, with the view of representing and gratifying their friends in the trade. What more serious allegation could be made against eight magistrates than the article couched in the language you have had read to you? Now, I said I would demonstrate to you that this article is defamatory. There is no escape from that conclusion if you examine the article, not narrowly, but acting upon your conscientious view of these words. It can but mean one thing: that these justices had committed a breach of duty, had acted corruptly, and acted corruptly in order to advantage those who were described in this article as their friends. It has been my duty to bring this matter in full before you. I have, to the best of my ability, placed it before you as a matter of consideration, as a matter to be weighed, to be thought about. It lies not upon me to make an appeal to you; but I join in the appeal of Mr. Isaacs on behalf of Sir Edward Russell in respect of his years and his position. And if in your consciences you can say that this article is not defamatory, acquit him. But you have, also, a duty to the eight magistrates. You have a duty to consider sincerely and truthfully what the meaning of that article is, and if, through no moral fault of his own, Sir Edward Russell—who takes the responsibility, as I believe he takes the advantages, of his paper—has allowed a defamatory statement to appear in the "Daily Post and Mercury," a statement reflecting upon these eight magistrates, a statement charging them, in the terms I have read, there is no resource open to you but to find that he is guilty of the offence with which he is charged.

THE JUDGE'S SUMMING UP.

At 3-9 p.m. his Lordship commenced to sum up in an address to the jury which occupied nearly two hours. He said:—It has now become my duty to sum up this case to you. I have to guide you as to all questions of law and then to present to you the facts which have been proved in evidence, with such comments as I may think necessary in order to help you to a right determination. The law you take from me, the facts you have got to judge for yourselves. If I make any comments upon facts you must take those comments for what they are worth. If they are worth little, reject them; if

they are worth much, give them such consideration as you think proper. Now, this is a prosecution for defamatory libel. In simple language that is the charge. The charge is that the defendant has published a defamatory libel. The procedure in this case was by way of criminal information. Some observations have been made upon that by learned counsel for the defendant in what I must describe as his most eloquent and masterly speech, because I should like to join with Mr. Taylor in expressing my admiration. I have not myself sat long upon the bench, but certainly I have never heard while sitting upon the bench two finer addresses than those which you, gentlemen of the jury, have been privileged to hear to-day and yesterday. Those speeches have been followed by the speech of Mr. Taylor, moderate in tone, as every speech from a prosecuting counsel should be. The defendant's counsel is entitled to inflame your minds and to move you, but the prosecuting counsel should be content, as Mr. Taylor has been, in putting forward the facts before you in moderate language. Well, as I was about to say, it is necessary that I should explain the procedure. It is the law of the land that a person who publishes a defamatory libel may be prosecuted. You may take civil proceedings to recover damages, but there is another remedy that is open, and you may take criminal proceedings to prosecute the person who has published the defamatory libel. You may take the prosecution in two ways. First, in the ordinary way by coming before the magistrates, which is as if a man were prosecuted for any other offence—that is to say, bringing the man before the magistrates, giving evidence against him, and asking the magistrates to commit for trial. If the magistrates commit, the man has to come before the grand jury, and if they find a true bill the case goes before the petty jury. That is the ordinary course. But there is another course, whether for libel or for anything else. You cannot prosecute the editor or publisher of a newspaper without obtaining the order of a judge in chambers to allow you to do so, the reason being that editors and publishers were sometimes vexatiously prosecuted, and it might cost them a great deal of trouble and annoyance when there was no just reason for the prosecution. Therefore, there was introduced the necessity of obtaining an order of a judge in chambers to enable the prosecution. Subject to that, the prosecution would be on the same lines as in any other charge. If the prosecution here had taken that line, and the magistrates had committed Sir Edward Russell for trial, and the grand jury had found a true bill, you would have had to try the case exactly as you are trying it to-day, on the same lines in every way. Your duty would be the same; the privileges of the defendant would be exactly the same, except this: In this case there is the power of reviewing the direction in law of the judge. In criminal cases, as a rule, that power is not given. In very rare cases, but in this case, there is power for the defendant if I make any mistake in law to go to court to get any judgment which arises in consequence of it set aside. However, your duty to-day is precisely the same as if Sir Edward

Russell had been committed for trial by the magistrates, and the grand jury had returned a true bill. To the procedure adopted in this case Mr. Isaacs dissents on the ground that it is obsolete. It is not obsolete, and never ought to be obsolete, the procedure which has been put in force by three judges of the King's Bench on this occasion. That procedure is not obsolete, and it is a perfectly proper procedure. When a person occupying a public position such as a magistrate, a judge, or a Prime Minister, or any other person occupying a public position, has been libelled, or it is thought that he has been libelled, for something done in his public capacity, you may adopt this very procedure by criminal information. You may go to three judges of the King's Bench and ask for leave to file a criminal information. But, first of all, as you go ex-parte, only the rule nisi is granted, and it comes on to be argued whether it should be made absolute. At that hearing, the defendant has the opportunity of being represented by counsel, and as in this case, the court has to decide whether this was a proper case for a criminal information. They do not decide upon the merits of the case, and their decision ought to have no effect whatever on your minds, because the prosecution only have to show a prima-facie case, as if before the magistrates or the grand jury. In this case, the court held that a prima-facie case had been made out for taking these proceedings. When, therefore, these proceedings come before you, the defendant is in no better or worse position than if he had come in the ordinary way before a petty jury. These proceedings are not allowed, no prosecution ought to take place, when a man's damage is to his purse, but only when damage is to his character, substantial damage to character. That is the question you have to decide here. Now, having said that, and having dismissed the question of procedure, don't let it influence your mind one way or the other, because it has absolutely nothing to do with the case. Now, I told you these are proceedings for defamatory libel, and I must tell you now what it is necessary for the prosecution to prove in order to justify you returning a verdict of guilty. It is necessary, first of all, to prove that the publication was with the authority of the defendant. That is not in dispute. Sir Edward Russell says that although he was not the writer—it matters not whether he was the writer or not—he passed it and authorised its appearing in the newspaper. Therefore, upon that issue you will have no difficulty whatever. Now, the next issue is the question whether this article is defamatory of the prosecutors. It is not necessary that I should give you any lengthy definition of what is defamatory. You can understand it yourselves—something that defames a man and is calculated to damage his reputation, to lower him in the estimation of those who are living with him or of the public either—and I think the defendant's counsel is justified in saying that this being a prosecution it should not be a mere trifling case, it should be a case of some substantial damage to his reputation before you are justified in finding him guilty. Now, that question is entirely for you, and any

observations I may make you will give just as much or as little weight to it as you think right. The responsibility of that issue rests upon you. Although it may be defamatory, it is not necessarily a libel, because it is the law of the land, and every person, it does not matter whether he is the publisher of a newspaper or anyone else, has a right to comment on the acts of a man if the subject matter is one of public interest. Now, it is for me to say whether this is of public interest, and I unhesitatingly say it certainly is. It is impossible for anyone sitting where I am, and trying prisoners, to avoid being impressed with the fact that a very large proportion of the crime that comes before a judge is the consequence of drink, and, therefore, anyone has a perfect right to do anything in reason to promote temperance reform. A man who does that is doing what is right and what is most useful, and unquestionably any such question as this as to the conduct of magistrates in dealing with temperance matters is unquestionably a matter of public interest. Therefore, the only question that remains is fair comment or not. Now, a person is entitled to comment upon the conduct of a man, but you must comment only upon facts, not upon supposed facts. No one has a right to set forward in an article facts which are not facts and then comment upon them. That cannot be fair comment. It is for the defendant here to establish the facts before you, and then, and then only, arises the question whether what the defendant has said is fair comment. When you come to a question of fair comment you ought to be extremely liberal, and in a matter of this kind you ought to be extremely liberal, because it is a matter on which men's minds are moved, in which people, we do know, entertain very, very strong feelings, and if they use strong language every allowance should be made in their favour. They must believe what they say, but the question whether they honestly believed it is a question for you to say. If they do believe it, and they are within anything like reasonable bounds, they come within the meaning of fair comment. Now, stopping here for a moment, and taking Sir Edward Russell's position and the position of Liverpool, it has been proved before you that Liverpool is a town where unfortunately there is a large number of public-houses. Although the population is very large, the number of public-houses is very large, and they need to be reduced; and Sir Edward Russell has during a long period taken a strong line in his newspaper, and, for all I know, out of his newspaper, in advocating temperance reform and the reduction of licences. His mind is very full upon it, and even if comments were made which would appear to you to have been exaggerated, it does not follow that they are not perfectly honest comment. But the comments must be grounded on proved or admitted facts. It is the law that if the facts be displaced, materially displaced, on which comment arises, it cannot be fair comment. I choose one passage from a recent judgment of the Privy Council: "There is no doubt that the public acts of public men may lawfully be made the subject of fair comment or criticism not only by the Press, but by all members of

the public; but the distinction cannot be too clearly borne in mind between comment or criticism of conclusions of fact, such as the disgraceful act committed or the discreditable language used. It is one thing to comment on or criticise even with severity the acknowledged or proved acts of a public man, and quite another to assert that he has been guilty of particular actions of this kind." Therefore, when I come to deal with the libel I shall have to draw your attention to the facts which are alleged as forming the subject of fair comment, and I shall have to discuss how far these are libels or not. That is the second point. In regard to the first question as to it being defamatory or not, however defamatory it may be, if it is fair comment it is no libel, and you will return a verdict of "Not guilty." But supposing it is defamatory and not fair comment, there is still another defence. That is that the statements are true, but it is for the defendant to prove that. It is not for the prosecutors to disprove the allegations. It is for the defendant to establish to your satisfaction that the charges he has made are true, and it is even necessary in criminal cases to prove something further. It formerly was the law that a man could be prosecuted for libel, and that he must be convicted even though the statements were true, but the law now is, and it is statute law, that if he proves that the statements are true, and if it is established to the satisfaction of the jury that it was for the public benefit that those words should be published, then he ought not to be found guilty. The charges against these people are that these magistrates in exercising their functions—which I think may be described as quasi judicial functions—they were guilty of misconduct. Still, gentlemen, it is for you to decide, but I should suggest to you that it is for the public benefit if a man, acting as a magistrate, has been guilty of misconduct whilst so acting, that those charges should be made. Otherwise how can the course of justice be put straight? It is right that they should be, but it is entirely for you, for the point has not been seriously argued on one side or the other, because it has been largely taken for granted that it would be for the public benefit. And therefore the only question, and the substantial question, is are they substantially true? Not necessarily every little word, but substantially true. That is the issue. Having explained the law, I will remind you of the facts proved in evidence. We start about December, 1904. The Licensing Act of 1904 was about to come into operation in the beginning of January, 1905, and we start with this fact—that apparently Liverpool would benefit by a reasonable reduction of licences, and therefore a place where the Licensing Act might be properly put into operation, to what extent is a matter of opinion. We start with the fact that the defendant is a person of high standing, a person who would not wish to injure anyone else, and a man who might have proper reasons in using strong language, and you find that in his paper he makes suggestions as to the constitution of the licensing body, the Licensing Committee. According to the Licensing Act, the magistrates act first of all by a committee, called

the Licensing Committee; then they act by another committee called the compensation body. As it happens in this case, both of these bodies consist of the same persons, as they ordinarily would be in a borough. In the county there are a number of licensing districts, each with its Licensing Committee, and the compensation body would necessarily be a different body, because it would consist of those members of the Licensing Committee and perhaps some members of the district. In Liverpool the body is the same, and it is natural that the persons should be the same, acting as the licensing and compensating body. That appears to have been the idea evidently in Sir Edward Russell's mind. His idea was that Mr. Royden and Mr. Isaac Morris, on the one side, and Mr. Henderson and I think Mr. Evans on the other, should, with Sir Thomas Hughes as chairman, form a Selection Committee, and he suggested that this was a parallel case with what had happened in the case of the School Board. In the case of the School Board there was proportionate representation, and the view of the other side—that is the Conservative side—was that the representation should be proportioned in the same way as in the case of the School Board. Those are views honestly held by every party, and either side might use strong language over the part the other took. But that is not the subject of this libel; it does not relate to the formation of that committee. There was an article relating to the formation of that committee in the "Daily Post" which has been put in evidence, in which it was said that "to constitute a Licensing Committee for Liverpool that will meet with general acceptance and approval is no easy matter, especially when the general body of magistrates by whom it is to be nominated is so politically lop-sided as the Liverpool bench. There is all the more reason for congratulation, therefore, when it is found that moderate counsels have prevailed, and that though there may be men on the Committee whose presence strong partisans would resent, the personnel of the Committee is, on the whole, reassuring. One may conclude that the desire of the whole Bench has been to secure a committee that will be both thoroughly representative and judicial, and to exclude as far as is practicable any possibility of fanaticism in one direction or the other." That was the view that was then taken by Sir Edward Russell. He says he has changed his view since. He is entitled to change his view. He might have criticised the formation of that Committee as much as he liked. After that we come to the libel. It is not the formation of the Committee that he criticised, but what certain members of that Committee have done. There was an article on the 5th December, and I will just briefly remind you of the history of the case. On the 6th January there was a meeting of the whole body of justices, when there was a question as to whether fifteen or sixteen members should constitute the Committee, and it was decided by a majority, I think, of 38 to 16 that it should be sixteen. On the 19th January the Committee was appointed by nine persons being invited to join it by Mr. Isaac Morris, one of those gentlemen whom Sir Edward Russell

thought would be a fit person for the selection. On the other side six persons were chosen at a meeting of Liberal magistrates. Quite right, no doubt. There it was. Strong observations were made on that, whether well founded or not well founded. What you have to do is to consider the observations in the libel. Now we come to the next important matter. There was a meeting on the 24th January of the Licensing Committee. There was a meeting on the 31st January of the Licensing Committee, and we look at the epitome to see what was done at this meeting. On the 24th January questions arose whether the compensation authority should be the same body as the Licensing Committee—whether the powers of justices in Quarter Sessions should be delegated to the same Committee, or delegated at all, or to some other committee; and it was resolved, as far as dealing with the compensation fund and levying the fund was concerned, that the power should be delegated to the Committee. But in that case a division took place, and by a majority, probably a party majority—it was a question on which people might differ, whether they should have a new Committee or the same Committee, but there it was. Something more was resolved, and this was resolved without objection—and, indeed, Mr. Henderson told us with his approval. What had to be done had to be done within a comparatively short time, because the Licensing Sessions, at which the renewals would take place, would take place on the 28th February and on the following days. Therefore, there was not very much time to consider what should be done this year in regard to objecting to houses and reporting them to Quarter Sessions as houses that ought to be extinguished; and, therefore, it seems to me the Committee did a very proper thing. They said, "We will select the 'A' and 'B' Division areas," instead of going over the whole district, but take area by area, and they said, "We will deal with the public-houses in that district," and it was resolved "that the special attention of the justices be this year directed to the beerhouse licences in the 'A' and 'B' Police Divisions in the city, where the premises were not used as restaurants, and that the Committee object to the renewals of such of these as can be opposed with a view to make reports from all to the justices." That is what took place on the 24th January. On the 31st January they had to consider the report, and the report was drafted by the clerk, Mr. Sanders, and on the suggestion of Sir Thomas Hughes, and I think it was said by Mr. Morris, the report is sent round to the magistrates, so that everybody would read and have an opportunity of considering it. It comes before the Committee for adoption, and this resolution was passed:—"Read report of this Committee, as settled by the chairman (Sir Thomas Hughes) and the deputy-chairman (Mr. Isaac Morris). Resolved: That the report be approved and submitted to the justices at the annual licensing meeting, and that in the meantime a print be sent to each of the justices." That report was adopted on the 7th February by the justices. That was a meeting of the whole body. Then there is another minute:—"Delegation of powers and duties.

It was moved by Sir Thomas Hughes, and seconded by Mr. Henderson, and resolved unanimously, 'that the report of the Licensing Committee on this question, which appears on page 82, and a print of which has been sent round to each of the justices, be approved.' " I will refer you to the material parts of this report. This report of the Licensing Committee recites what had been done. First of all, that on the 6th of January it was discussed, and a resolution was passed "That the consideration of the question of delegation to a committee of the powers and duties vested in the whole body of the justices by the Licensing Act of 1904 be referred to the Licensing Committee to be appointed on January 19, with instructions to report to the justices thereon." The Licensing Committee was appointed, and then there is here a resume. There is then a list of the principal powers and duties devolving upon the whole body of the justices by the Act, and amongst others you will see No. 4: "The imposition of charges on licensed premises to form the compensation fund," and No. 5, which relates to the borrowing of money for the purposes of compensation. Now you turn to page 3, and you find: "With regard to No. 5 the Committee do not recommend the justices to act upon the borrowing powers." Everybody unanimously agreed to that. They were going to go gently. Then, "The maximum sum which can be levied in Liverpool this year, based upon the estimate contained in the Parliamentary return, is £36,705." It is important that you should bear in mind that this Committee was sensible of the fact that that is what the full levy would produce. Then the report goes on:—"And whilst no determination has been come to by the Committee as to the amount of the levy to be made if the fixing of it is left to them, yet they believe that it would be highly undesirable to entertain the idea of exercising the borrowing powers contained in the Act." At the bottom of page 3 there is this:—"The Licensing Committee recommend the justices to delegate to a committee, composed of the same justices as form the Licensing Committee, the powers and duties, &c." To that Mr. Henderson objected; he was overruled by a majority, but he does not suggest that he objected to five. Now we come to the next page:—"With regard to the imposition of charges." This is most important, because this was the report which the Licensing Committee suggested for the purpose of showing what procedure they should adopt. They had amongst other things to consider: "Shall we fix the levy first and consider the houses afterwards, or shall we see the houses first and then consider the levy?" With regard to this, Mr. Henderson, in his evidence, stated that he was entirely in accord. Then the report says:—"With regard to the imposition of charges, the Committee desire to point out that in recommending the justices to delegate this power they do so with the view of enabling the Committee to form some estimate of the amount which will be required to be raised before the levy is made." They said, "We want to look at the houses before the levy is made." Then the report proceeds:—"The Licensing Committee

will first report a number of licences for extinction. These reports will come before the justices, who will have power to reduce the number, but will be unable to increase it. The revised list of licences will then go back to the Committee, and ultimately it will be decided how much compensation will be payable in respect of each licence. It will then be necessary for the Committee to impose a charge which will be sufficient to pay the necessary compensation and the exepnses of the administration of the Act." The whole body of justices approved that and passed it. One of the things you will have to consider when we come to the 12th of July is, what was their view in carrying out these instructions which had been approved by the whole of the justices, and what was their duty in regard to the amount of the levy. You have got to consider whether those words would justify them in levying either the full amount, or a larger amount than was necessary, and laying by for a future year to impose " a charge sufficient to pay the necessary compensation " and the expenses of the administration of the Act. The last paragraph says:—" The Committee have considered what course they will adopt this year in exercising the power given them by the new Act as to reporting licenses for extinction on payment of compensation, and have decided to select a number of beerhouse licences in the A and B Divisions of the city. The following procedure will be adopted: At the annual meeting the chairman will, on behalf of the Licensing Committee, object to the renewal of a number of such licences, and such objection will be followed by a written notice setting forth the grounds of objection. Each licence will then be considered by the Committee at the adjourned meeting, and after such consideration a number of licences will be reported to the whole of the justices, who will then hold their preliminary and principal meetings in accordance with the Home Secretary's rules. When the whole Bench have finally decided which licences are to be taken away those cases will go back to the Committee, who will then hold a supplemental meeting for the purpose of allocating the compensation to be paid, and of deciding upon the details of each particular case." That is a correct and proper statement of what their duties would be. Now, between the 31st January and the 28th February, when the question would arise in court as to whether licences should be renewed or referred to the justices for extinction, there were a number of meetings of the Licensing Committee, at which the procedure was this: They went, or some of them went, to inspect the houses, and they came back and then considered as to whether the houses should be put in the list for renewal or in the list of the licences proposed to be extinguished. It appears that as to four or five of those houses there were divisions, and divisions on party lines, where the Radicals, the Liberals, wanted them to be put into the extinction list, and the Conservatives wanted them to be put into the renewal list, and, the Conservatives out-numbering the Liberals, the four or five houses were put into the renewal list instead of the extinction list. Now, there again there

was room for comment. Comment might have been made as to what had taken place—a perfectly proper subject for fair comment and for perfectly legitimate comment. When we come to the libel, you will have to consider whether that was a subject of the comment, or whether it was not entirely what took place on the 12th of July. There are about ninety beerhouses in A and B divisions, and during the period between January 31st and February 28th they took eighty-two, and gave notices of objection for the whole eighty-two. They then considered them one by one in the way I have said, and they eliminated a certain number—I think thirty-five, leaving forty-seven. These forty-seven had to come before the magistrates, the Licensing Committee sitting in Court, in which it was their duty to hear evidence, to hear the parties objecting and the parties supporting the licences. They would have to act according to the best of their judgment, and say: Ought these to be extinguished or not? In that process those houses were reduced from forty-seven to twenty-nine. Now, then, they had therefore determined, according to the powers invested in them, to refer to Quarter Sessions or to themselves, the compensation authority, those twenty-nine licences. This decision having been come to, that number could never be increased. Thereupon came the report of the 22nd of March, which again had to be submitted, and was submitted, to and adopted by the body of justices. The report first of all said:—"At the adjourned general annual licensing meeting holden at Liverpool, the 28th February and 1st and 2nd March, 1905, for the above-named licensing district, we, being the renewal authority for said district, decided to refer to you, under section 1 of the Licensing Act, 1904, the question of the renewal of the licences held in respect of the premises specified below." Then over the page we find:—"In connection with the question so referred we report as follows—As soon as possible after the appointment of the Licensing Committee, which acts in Liverpool as the renewal authority, the Committee took into consideration the question as to whether any licences should be reported this year for extinction with compensation. Owing to the lack of sufficient time to consider this question as it affects the whole city, the Committee decided to confine their attention at the licensing meeting to the ante 1869 beerhouses in the A and B police divisions of the city, excluding licences which might be specially brought to the notice of the Committee. The reasons which weighed with the Committee in selecting these beerhouse licences as a commencement of their work under the Act were (1) their structural unsuitability for their trade; (2) the undesirable position in which most of such houses are situated, rendering police supervision difficult; (3) that the A and B police divisions are more than sufficiently supplied with public houses for the wants of the people; and (4) that in the general interests of the public the renewal of the licences was not desirable. The Committee accordingly at the annual licensing meeting objected to the renewal of eighty-two licences, and between that meeting and

the adjourned meeting inspected the premises. As a result of the inspections and enquiries it was found possible to intimate to the parties interested that in thirty-five cases the licences would be renewed, and in this way the unnecessary expense of an inquiry in court was saved. In the remaining forty-seven cases a notice of objection was served, and evidence was heard at the adjourned meeting, with the result that the Committee decided to report the twenty-nine cases, particulars of which appear below. An arrangement was come to in court with Messrs. Peter Walker and Son, Limited, who owned fifteen out of the eighty-two cases, whereby they agreed to waive all claim to compensation which they may have as owners in the licences 3, 6, 11, and 21 in the above list, provided they are allowed to enlarge the premises in five cases, the licences for which were renewed. Plans showing these proposals will come before the justices in due course. In the case numbered 16 on the list, being 23, Duckinfield Street, the owners, Messrs. Threlfall's Brewery Company, Limited, agreed to forego any claim to compensation to which they or their manager might be entitled." Then the report proceeds to state that this particular matter of the compensation provisions of the Act being "in an experimental stage, it is impossible for the Committee to give any reliable estimate as to the cost of extinguishing the twenty-nine licences mentioned in this report; but, having regard to the small takings, and to the fact that the two fully-licensed premises were kept open at a loss, and also that little compensation will be asked for in five" (those were Walker's houses) "cases, it is probable that the average cost per house will not exceed £500." So the magistrates carefully considered, which was their duty, what the compensation would cost. They estimated, I think Mr. Henderson said—I will look and see (here his lordship referred to his notes)—"I agreed it was a fair estimate that the average amount would not exceed £500." So he thought, and he adopted this report; he does not suggest that he voted against it. He said it was no use, but you may ask yourselves whether it would not have been better to enter the protest he described. Well, you have heard what was said about it:—"The compensation provisions of the Act being at present in an experimental stage, it is impossible for the Committee to give any reliable estimate as to what it will cost to extinguish the twenty-nine licences referred to in this inquiry. Having regard to the small takings in the case of some of the fully-licensed premises and the very little compensation that will be asked for in five of the beerhouse licences, it is probable that the average cost per house will not exceed £500. That makes a total cost of £14,500, which would be the sum, plus expenses, in their judgment, to be raised to pay off the extinguished licences. That was the maximum amount to be placed at the disposal of the compensation authority. If that was received, the Committee recommend the whole body of justices, at their preliminary meeting, to confirm in its entirety the action of the Committee." Now, recollect that the

estimate for the twenty-nine houses turned out to be an absolutely correct estimate, that is to say, within a few hundreds of pounds. That is what they say, and the Committee are putting down what they think the compensation fund will be—twenty-nine beerhouses at £500 each, a total of £14,500. What is the next thing that takes place after that? The estimate had to come before the justices—that report was adopted by the whole body of justices—and then we come to the question of the preliminary meeting. That is to say, we come to the sittings of May 30 and 31 and June 1, when the justices settled the amount of the compensation. They had to settle what proportion of compensation should be paid. They had to settle, as far as they could, the total amount—never mind about the distribution—the total amount to be paid in respect of each house. What they chose to say would not be binding upon the licence-holder. Unless he agreed to it, he could say, "I prefer having it settled by Somerset House." The magistrates, as we see, are able to agree as regards eighteen of the houses, the compensation to be paid as regards these eighteen being £7,835, while in respect of one it appeared that no compensation was required. With respect to the remaining ten, there was a claim of £13,782, which, according to the statement of Sir Thomas Hughes, was a very extravagant and exaggerated sum; while Mr. Henderson thought it was about what they would be entitled to, but he would not say. On July 4 it was resolved to consider the amount of the levy on July 12. Now, it is necessary that you should consider what the position of matters was. They had got to levy a sum sufficient to pay these charges of compensation, and they would, of course, consider what would be likely to be recovered in respect of the ten houses with which they had not settled. As regards that, they had got these figures before them; they had the assessments to the poor-rate, and they had the takings of the houses. They had the assessments of the eighteen houses and the takings, and, having a rule of three sum, they could arrive nearly at the total required of the actual sum to be paid as compensation—the difference between the value of the houses with a licence and the value without a licence. That must depend upon the assessments and the takings. Thus a house assessed at £50 with a licence, might without a licence be worth £30. What was a fair percentage—twenty or twenty-five years for purchase? At twenty-five years it would be £500. That is the sort of calculation. You would also look at the takings, and say: "Let us look at the eighteen houses and see what they have to get with regard to the takings." These were rather smaller houses, the takings a little over £8 a week, the poor rate assessment being £600 for the lot and takings a little over £150 a week. Divide £150 by eighteen and you will arrive at the average takings. So the magistrates could arrive at a rough estimate, and they meet on July 12. There are present four Liberals, eight Conservatives, and Sir Thomas Hughes. It is moved on the Liberal side that the maximum levy—that is to provide £36,000—shall be made. Now,

eight to the justices, the prosecutors, are against this. They are agreed to such a sum as will be sufficient to pay the compensation, and they know they have about £8,000 available, and have an estimate of the outlay. The suggestion of the prosecutors is that it would have been absolutely wrong to levy the maximum under the Act. The other side say that ought to be the levy, in order to have a large sum to go on with next year. Was that what they were instructed to do by the statements in their report adopted? Judge for yourselves. Was it very wrong for these men to vote against the maximum levy? They did vote against it. Now comes the question of the three-fifths levy. The three fifths would produce £21,000, and that proposal was supported by Sir Thomas Hughes and opposed by the eight gentlemen who are the prosecutors in this case. Now you have got to consider their conduct with reference to that. They say, these eight gentlemen say, "the justices told us to levy a sufficient sum. We consider we were levying an amply sufficient sum when we said it should be half the maximum"—which we know would produce £18,350, and perhaps a little more—"and if we were right in the original estimate for the whole of the houses would be £14,500, so we are right in saying that £8,000 being allowed for the eighteen houses, £6,000 something would be sufficient for the ten, so that £14,500 or £15,000 would be required, plus expenses, and when we voted £18,500 we were carrying out to the best of our ability what we had been told to do—namely, to levy a sufficient sum." On the other side the view taken was this. The claims came to £13,000. The amount agreed was £8,000. They said, "We ought to levy such a sum as will secure that, and it requires three-fifths to do it." Those seem both arguable points. Criticism might be fairly given on these figures; but what you have got to see is whether the libel dealt with these figures, or something very different. The three-fifths was rejected, the half was voted. What happened afterwards was that Mr. Henderson went to the Reform Club for tea and began to talk. Mr. Farrie and Mr. Jcans were there, and he told them certain facts. He says that some of these facts are stated there, but he says, "I did not tell them that it was not likely to be less than £13,000. These were not the words I used." I think, perhaps, they were not; but, unfortunately, in all these things there was some misunderstanding, and Mr. Farrie, I dare say with perfect bona-fides, composed and wrote this libel, and then it came before Sir Edward Russell in the usual way. He read it carefully, saw the figures, assumed the facts, and so passed it. Now, I must tell you this, that it is no answer for Sir Edward Russell to say, when you are dealing with a question as to whether a statement is true or whether it is defamatory, "I believe those to be true." It is no answer in law when the question of the truth of the comments is to be considered. I have no doubt Sir Edward Russell did believe these facts to be true. So would you in his position. There is no time to investigate. He has got Mr. Farrie, who, I have no doubt,

has been on his paper a long time and is relied upon, and he did believe those facts to be true. I say that without hesitation, but, unfortunately, it is not sufficient unless the action is what is called privileged, and this action was not privileged. A great point was made by Mr. Isaacs in cross-examination—"Why didn't you write to Sir Edward Russell before you took proceedings?" I must tell you if you are going to take criminal proceedings you must not parley with them, and the prosecutors were advised by counsel, what undoubtedly was good law, that they would not be entitled to ask for a criminal information if they had begun by asking for an apology. It is not legitimate to put the criminal law in motion to obtain an apology. Once you put the criminal law in motion it is then before the court, and it is then the court alone that can deal with it. Therefore, I am bound to tell you that, from a practical point of view, if they desired to prosecute defendant, they were right in not communicating with him before. What follows? There is an application for a criminal information which goes before the court. The only facts which come out afterwards are the assessment of the compensation. The assessment of the compensation for these ten houses was £6,212. This was awarded in respect of the claims for the ten houses of £13,730. Rather less than half was awarded. There was the £7,855 to be added to that, which makes £14,067. With the addition of expenses it makes £14,367. Now that is subject to this, that there are two appeals pending. In one case the claim is £1,195, £445 allowed. And the other's claim was £1,375, and £506 was awarded. If you add the full amount of these, and, of course, they never get their full amount, it would come to nearly £16,000. It is said by the defendant "I did not know that, and it was not known," but if they had alleged it as a fact, what the amount of compensation was to be it is no answer to say, "I did not know," because the short answer to that is "you mustn't make a statement of facts which may be very injurious to other people if you don't know the facts. If it turns out that you made untrue statements, you are responsible." Now we come to the libel itself, and I think I must trouble you to go through it with me, because it is necessary to look at it carefully in order to see what it means, and in order to apply the rules that I have mentioned to you. Now, although I am dealing with it paragraph by paragraph, you have a right and ought to look at the whole, because one paragraph may colour another. But when you are looking at this, when you are considering the question of whether it is defamatory, your bias should be to find it to be innocent rather than defamatory, because the prosecution have got to prove their case. If it is on the border line, you ought to give the defendant the benefit of it, because in a case of this kind the onus of proof is on the prosecution. Let us see it. His lordship proceeded to quote from the alleged libel, and said there was no harm and it was fair criticism so far as the opening paragraphs were concerned. The controversial part with which the jury had to deal

commenced:—"These gentlemen will hardly pretend that they were influenced in the course they took by a desire to diminish the number of licences in the city." That is rather, continued his lordship, a prelude, and there are the facts which tend to support it. "The sum which it will be possible to raise in the current year at the fixed rate will amount to about £17,500." Now, the learned counsel for the defendant is quite right in saying you should not be too narrow about the construction of small inaccuracies. If they don't greatly affect it, you should not pay too great attention to them. Of course, if they come one after the other and are all in favour of one view, you may look a little at them, because if you find everything is minimised so as to make the conduct of these magistrates appear worse, it is a matter you should take into your consideration. It is said that in December there appeared a statement in the "Liverpool Courier" that the maximum levy would be £35,000. That matters not. They are stating a fact here, and the defendant has got to prove that those facts are true, not that he believed them to be true, in order to lay the foundation for his fair comment. You must not state incorrect facts and then make your comment as if these incorrect facts were really facts. That would be wrong altogether. They must be correct in order to be the subject of fair comment. You have no right to comment upon facts which do not exist. (Reading:) "Now, apart from the expenses of administration, which will be considerable, the very modest programme which the Bench have decided on for the present year must involve an expenditure considerably in excess of the total that can be raised by yesterday's decision." That is a statement of fact. They proceed to show how they make that out: "The Bench have not ventured to propose the extinction of a single full licence." If that were an inaccuracy, the comment might nevertheless be fair. It is not in accordance with fact, because there were two fully-licensed houses. (Reading:) "But they have picked out a few of the '69 beerhouses in the A and B divisions for abolition under the Act. Compensation for a few of these"—that means half the twenty-seven—"amounting in all to £8,000, has been fixed by mutual agreement"—that was not quite right; it was more than half—"and the rest have been referred, as provided by the Act, to the arbitration of the Inland Revenue authorities. The amount in these cases is not likely to be less than £13,000." That is not true. We know the facts. That is what they have to prove. They have not proved that it is not likely to be less than £13,000. On the contrary, they have proved that their own estimate would have been some £6,000 or £7,000 more. "The matter, therefore, stands thus"—and now we are coming to the crux of the whole thing; they are now summing it up; they are saying now: See what the magistrates have done—"The matter, therefore, stands thus: For the extinction of the selected licences—licences which the Bench have decided ought to be extinguished forthwith in the interests of the community—a sum of not less than £21,000 is required." We know that is not

true. He may have honestly believed it; but that will not do. It must be true. I do not mean to say to a thousand or two. Of course, the persons who read this paper have not been sitting on the Licensing Committee. They know nothing except what is told them. They are told that no less than £21,000 is required, and that the Licensing Committee decline to levy more than £17,500. If this were the true state of the facts—if these eight gentlemen, knowing that £21,000 was required, only voted £17,500, I think you will agree with me they would have done something that was very wrong, for they would have been declining to carry out the Act. They would have declined to make a sufficient levy, and all these criticisms would have been perfectly justified if these figures were true. But now what is the real state of the facts? The real state of the facts is that these eight gentlemen thought, and thought with reason, that, let us say, £15,000 would be required, and they were voting £18,300. That is an absolutely different state of things. In the one case there is a deficit of £3,500, in the other case there is a surplus of about the same amount. The two things are absolutely opposed. Criticisms that would be absolutely just upon one are absolutely unjust upon the other. I must tell you that you must not comment upon incorrect facts, and a comment upon incorrect facts in law is not a fair comment. I am bound to tell you that as a matter of law. You have to say whether the facts are correctly stated. If the facts are substantially incorrect—anything like a surplus on one side and a deficit on the other—you cannot have fair comment upon these facts. Are they correct? You have the figures before you. You can judge for yourselves. Now we come to the criticisms. "There is only one explanation of this state of affairs. The dominant party on the Bench do not desire to facilitate the working of 'the greatest contribution ever made to the cause of temperance reform.'" I told you there cannot be fair comment upon incorrect facts. But the first question is whether these were defamatory words—whether they charged wrong acts, something in the nature of misconduct, to the magistrates. That is for you to say. I should tell you it does not matter in the slightest degree what anybody intended who wrote these words or published them. The test that you have to apply is this—What would an ordinary reasonable man of ordinary intelligence, living in a place where this paper circulates, think of these eight magistrates with regard to whom this was said? Would he think that they were accused of being guilty of misconduct? It is entirely for you to say whether these words imputed misconduct. Never mind about corruption or dishonesty at present. What said Sir Edward Russell himself upon the point of misconduct? He said, "I realise that this was a grave reflection upon the magistrates." But you are not bound by Sir Edward Russell; you may think it was not a grave reflection. Sir Charles Petrie was asked, and he said, "I do not consider that this was a reflection

upon me in my personal capacity. I consider it was a reflection upon me in my official public capacity." I am bound to tell you that if it was a reflection on him in his public capacity then it is defamatory. Whether it is a grave reflection upon him in his public capacity is entirely for you. But do not think that the question is whether it is a reflection on him in his private capacity or his public capacity. That is quite immaterial; either may be defamatory. The materiality of that point arises rather upon the question of fair comment, but I have been obliged to tell you that if you find these facts are incorrect you must shut out fair comment. When you are considering the question of fair comment, then it is reasonable to look at the bona-fides of the person who published it, but not when you are dealing with the question whether it is defamatory or not. You have to deal simply with the question: what is the meaning the ordinary person in the street would put upon the words "Did not desire to facilitate the working of the greatest contribution," &c. That means they did not desire to facilitate the working of the Act. It is the duty of magistrates forming a Licensing Committee to facilitate the working of the Act. You have to ask yourselves whether the statement that they, being magistrates whose duty it is to facilitate the working of the Act, did not desire to facilitate the working of the Act, is accusing them of something in the nature of misconduct. "They did not desire to diminish the number of licences in the city, but rather to hamper and obstruct those who are striving to effect 'without gross injustice and discontent' a sorely-needed reduction." What they are saying here is that by their vote on this occasion it ought to be inferred that the magistrates did not desire to diminish licences. If it were true that they voted £17,500 when the amount required for compensation was £21,000, that seems to me to be a perfectly proper criticism; but how can it be a proper criticism if the figures are—Compensation required, £15,000; compensation voted, £18,500? Mind you, it was the only way they could diminish licences. They could not go back except by providing insufficient funds. If they provided insufficient funds, that would have the effect of not reducing the number of licences. If you have not got the money you cannot pay the compensation, and the licences would go on. The interpretation on the other side is this—"That we are looking at the future; at the next year. We were not only considering this year; we were considering next year." You must look to see if it bears that out. "The effect of the Committee's decision will be to make the rate of reduction actually less than it was under the old order of things, a result which, no doubt, was shrewdly foreseen." The effect of the Committee's decision—if by the decision ample funds were provided for the twenty-nine licences—would not alter the number of licences one way or the other. They could not increase the number by their vote. They could not diminish it. Twenty-nine was the number fixed. It could not be increased. It is true that the rate of reduction for the last two

years had been higher. It was sixty-six in 1904, and in the previous year eighty-one. This year it was forty-eight. But if you take the whole of the years together, the average would be something between thirty and forty. The prosecution says, "Our decision had nothing to do with that. The decision with reference to that was taken on the 28th February and the 1st and 2nd of March, when it was decided judicially that the number was to be twenty-nine, and the effect of the Committee's decision was to provide funds for this. "A result which no doubt was shrewdly foreseen." You must judge what the meaning of that is. The prosecution say that anybody reading this statement would say, "It is an imputation that we were always intending to stop the diminution of licences; intending that the result would be as small as possible." You must judge. Now, so far, I do not think it could be said—but mind, it is entirely for you—that anything said up to the present, if it stood alone, pointed to corruption. Nothing is said up to that point about the brewers or anything else, and if it were necessary for you to find that up to that point there was an imputation that the conduct of the justices had been corrupt, or that their motive was corrupt, I do not think you would so find it. That is said to be drawn from what follows: "We congratulate the trade upon the ability and courage of their friends—we had almost said their representatives—on the Licensing Committee." Now, it is said—it is entirely for you to say—the meaning of "friends" is "political friends." "They have supported you; they want their reward; you are giving them their reward." That might be corrupt, but you should not jump hurriedly to such a conclusion. If you think you are compelled to come to it, you must come to it; but if you do not think that those words justify the view that any reasonable person would assume that they were being charged with corruption, you ought not to say that they were being charged with corruption. But then come the words: "We had almost said their representatives." Now, of course, for magistrates to be representatives of the trade would be very wrong. You might consider it corruption. Then they say, "We had almost said." You have to ask whether that makes any difference. Does it make any difference to a person to say "I had almost said you were a thief," or to say "You are a thief"? Consider how an ordinary person reads it. Now, gentlemen, that is the whole article. If you find part of it is defamatory, not fair comment, and not true, you will be bound upon that to find a verdict of "Guilty." It is not necessary, I must tell you, that you should find that it was imputed to them that they were guilty of dishonest and corrupt conduct. If you think that they were charged in this libel with grave misconduct—that there was a grave reflection—that would be quite sufficient, and you would be bound to return a verdict of "Guilty." You must take it bit by bit. Some of these may be grounds on which you would properly find him guilty; some on which you would not find him guilty. If you find that he is guilty of

publishing a substantial accusation, a substantial defamation, you are bound to find that he is guilty. But the prosecution have got to prove that it was defamatory. The defendants, if they rely upon fair comment, have got to prove that the facts which they alleged are true, and it is for the defendant, so far as he relies upon justification, to satisfy you that what he stated is true. Now, I have done my best to explain the matter to you. You have got now to exercise your judgment upon it. You have heard a good deal of politics in this case. I am quite certain I need not tell you, gentlemen, that you must not allow yourselves to be biassed, as I am sure you won't, in the smallest degree. Juries ought to, and in my experience do, when they get into the jury-box, forget their politics, and I am quite sure you will forget your politics. You won't look to see whether your verdict will amount to a triumph for one party or the other. You will honestly consider it. I tell you, you have got to look at it from two points of view. You have got to look at it first from the view of the liberty of the Press, the advantage to the community to have fair and reasonable comment. That is a privilege you should not diminish in the smallest degree. You may take those passages which were read by Mr. Isaacs as fairly representing the law on that point; but he did not put the other side, and, therefore, I will put it to you in the language of Chief Justice Cockburn, because you have to look at it also in the interests of the prosecutors. He said: "It has been said in argument that it is for the interest of society that a man's public conduct shall be criticised without any limit except that which is admitted on all sides must be imposed—namely, that the writer must always write according to what he thinks just and true. But it seems to me that the public at large have an equal interest in the maintenance of public character, without which public affairs could never be conducted with the view to the interests and best welfare of our country; and I think we ought not to sanction attacks upon our public men, which, if allowed, would be destructive of their character and honour, unless such attacks are well founded." You must take both matters into consideration. It is right that the character of a public man should not be attacked unless the attack is well founded, and it is right it should be attacked if he has done something which is wrong; but criticism must be upon actual, proved facts. I have done my best to explain the matter to you, and you will say whether you find a verdict of guilty or not guilty. You must not find him guilty unless, first of all, you find that this is defamatory in the sense I have explained. If these gentlemen are not attacked, seriously attacked, you must not find that it is defamatory; the whole thing falls to the ground. If you find that it is defamatory you may then consider whether this, though it be defamatory, is fair comment, but fair comment must be upon actual, proved facts, and not upon supposed facts. And, lastly, if you were to find that it were defamatory and not fair comment, you have to consider the question of its truth; and if you find that these attacks were true,

and for the public benefit, that would be an answer, but it is for the defendant to prove that they are true—to prove that they are substantially true apart from small details. Now, having regard to that, then, it is your duty to consider carefully whether you find the defendant guilty or not guilty. Something was said about a special verdict. It is open to you—I am not advising you to do it; I think it is much better you should not—but it is open to you to say not only whether the defendant is guilty or not guilty, but also to set out the facts in your findings, but I do not advise you to do it. I would advise you to try to find whether he is guilty or not guilty, but if you find it necessary to set out the facts in order to say whether he is guilty or not guilty, you may do so. The better course, however, as a rule, is to give a straight verdict of guilty or not guilty.

VERDICT OF "NOT GUILTY."

A POPULAR ACQUITTAL.

On being asked, a couple of minutes after 5 p.m., to consider their verdict, the jury expressed a wish to retire, and were locked up accordingly. The crowded court was not long kept waiting, for eighteen minutes later it was announced that the jury were returning into court. Naturally the inference from the rapid decision was that they were agreed and to an acquittal.

When the jurors had all retaken their seats in the box,

The ASSOCIATE asked: "Gentlemen, have you agreed on your verdict?"

The FOREMAN.—We have.

The ASSOCIATE.—Do you find the defendant guilty or not guilty?

The FOREMAN (in a voice audible in all parts of the court).—Not guilty.

From every section of the court came loud cheers, which were suppressed only to be raised again and renewed with greater vigour in the corridors and outside on the plateau, the echoes reaching the many friends of Sir Edward Russell who had remained in court to testify their sympathetic approval by hearty handshakes, Lady Russell also receiving numerous congratulations.

The first to congratulate and shake hands with Sir Edward upon the favourable issue of the case were his counsel, Mr. Horridge, K.C. (Mr. Rufus Isaacs, K.C., having left the court earlier in the afternoon), and Mr. Jeans.

While Mr. Horridge was making an application as to the costs, Sir Edward Russell and his immediate friends proceeded to leave the court—a matter of considerable difficulty owing to the pressing forward of scores of personal and public friends to offer their spontaneous and palpably sincere congratulations.

When Sir Edward and Lady Russell had at last emerged into the corridor, the demonstration of goodwill was renewed with increased heartiness, and on this occasion was indulged in free from official suppression. Among the most prominent to give unfettered relief to pent-up feelings was Mr. John Lea, and he was soon joined by a large assembly of equally well-known citizens.

Three cheers were raised for Sir Edward Russell, Lady Russell, and likewise for the jury. Sir Edward acknowledged the outburst of goodwill by lifting off his hat and shaking hands with as many persons as he conveniently could. Escaping into the Press-room, he received the no less cordial felicitations of his professional colleagues, and there even the policemen and janitors on duty pressed forward to pay their humble tribute.

APPLICATION FOR COSTS.

The moment that quietude had been restored in court, Mr. HORRIDGE was on his feet applying for costs on behalf of the defendant. He said: "I understand that the application for costs should be made now, but it is to be taken subsequently."

His LORDSHIP.—I understand so. You can consider the application made now.

Mr. HORRIDGE.—I understand it follows as a matter of course, but that I have to ask?

Mr. TAYLOR.—Will your lordship reserve the matter?

His LORDSHIP.—Yes; but it should be settled while I am in Liverpool.

Mr. TAYLOR asked his lordship to certify that there was, under a rule which he quoted, good and reasonable cause for the information.

His LORDSHIP.—How can I say that, Mr. Taylor, when the jury have just given a verdict of not guilty?

It was agreed that the question as to costs should be mentioned on Tuesday, at two o'clock.

The jury were thanked, and discharged from further attendance at the current assizes.

THE QUESTION OF COSTS.

PROSECUTORS TO PAY.

On Tuesday, 12th December, 1905, in the Nisi Prius Court at the Liverpool Assizes, Mr. Justice Bray, upon reference by counsel, dealt with the deferred question of costs in the criminal libel action "The King v. Russell," in which a common jury on Saturday, after a three days' hearing, brought in a verdict of "Not guilty." Defendant was Sir Edward Russell, editor-in-chief of the "Liverpool Daily Post and Mercury," and the prosecutors were eight members of the Liverpool Bench of Licensing Justices.

Mr. F. E. SMITH.—I do not propose to address any application to your lordship. I prefer that your lordship should make such order as to costs as in a matter of this kind would be ordinary.

His LORDSHIP.—You don't ask me to certify, then?

Mr. SMITH.—No, your lordship; and the reason is that your lordship has no power to certify.

His LORDSHIP.—Because I have no power to certify?

Mr. SMITH.—Your lordship has power to certify; but it would not help me, having regard to the decision. Therefore I do not ask your lordship to make an order which would be merely academic.

Mr. HORRIDGE.—But it does not depend upon your lordship's decision, but upon an Act of Parliament which governs these things.

His LORDSHIP.—It seems quite clear to me that I have no power to certify.

Mr. SMITH.—Therefore I make no application.

Mr. HORRIDGE.—The costs will follow as a matter of course upon an application to the King's Bench Division.

His LORDSHIP.—I have nothing to do with that; I have no jurisdiction to deal with the costs, as far as I can see, at all.

The ASSOCIATE.—I enter a verdict of "Not guilty"?

His LORDSHIP.—Yes.

The ASSOCIATE.—That is all?

His LORDSHIP.—Yes.

[From this it will be seen that the defendant recovers his costs as a matter of course.]